GREENE: 'That Enquiring Man, John Synge'

THE NATION

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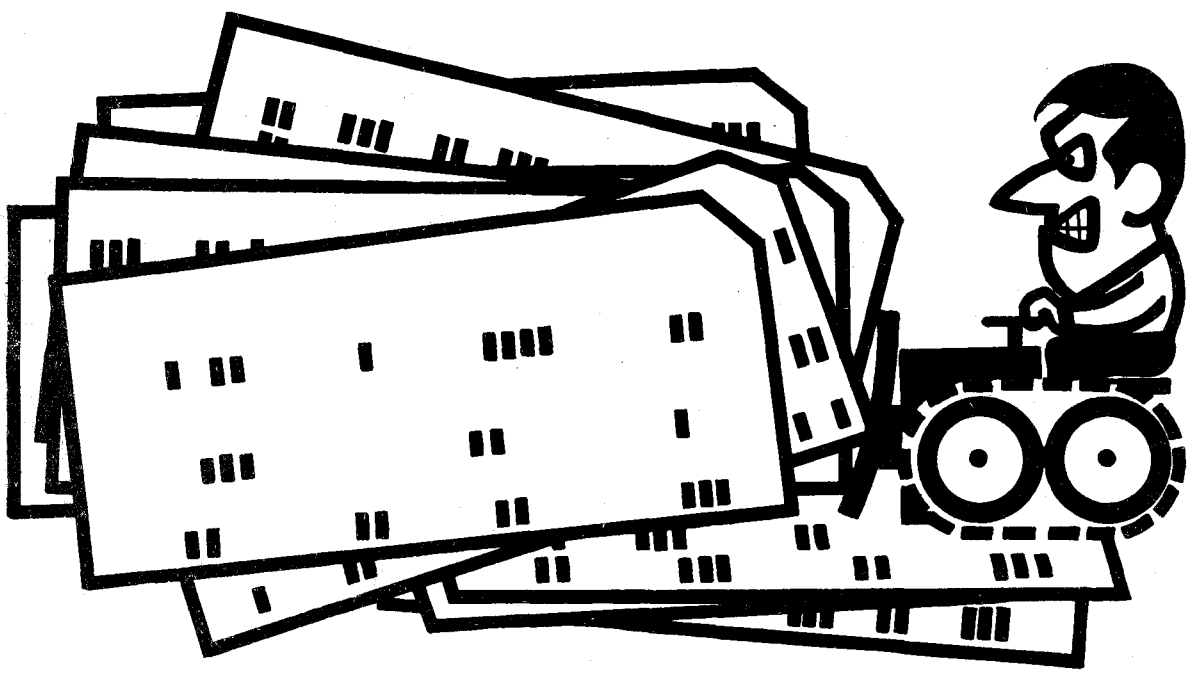
COMPUTERS AND DOSSIERS

Vern Countryman



'Damn Your Cards,' said he, 'They Are the Devil's Books'

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LETTERS

truth about refugees

San Francisco, Calif.

DEAR SIRS: When I started to read Sen Edward M. Kennedy's article, "A Slaughter of Innocents" [*The Nation,* June 28] I had hoped he would be offering some possible solutions for the conditions of refugees in Vietnam. That apparently was not his intent. Recounting well-known information at this late stage in our country's involvement in Vietnam contributes nothing to improve the lot of refugees, nor does it offer the kind of outside viewpoints which can benefit those of us reponsible for working with the GVN Ministry of Social Welfare provincial representatives.

Over the past few years . . . the conditions of the refugees in the different parts of Vietnam have been treated as if they were all the same. Such, unfortunately, is the case with Senator Kennedy's article. As those of us who work with the refugee problems in the Delta can attest . . . there is little basis for discussing conditions in the Delta in the same context as the other regions. More than 50 per cent of the people considered to be refugees in Vietnam live in the Delta. Yet the Senator's article deals solely with conditions in the northern part of the country and he implies by omission that similar conditions exist throughout Vietnam. The treatment of refugees in the north, the Montagnards in particular, is admittedly bad. But people in the Delta are not as bad off as is suggested in the article. This is particularly true in the case of the U Minh forest refugees. To insinuate that 40,000 refugees . . . were created from the recent U Minh forest military operations . . . and then forcibly moved against their will elsewhere, is not only incorrect but misleading.

Senator Kennedy unfortunately concluded, and not began, his article with "There is much to be done for the war victims in Indochina. And there is much more our country must do to help." With the American phase-down now under way, what is needed . . . are suggestions about what further actions may be undertaken by the United States to bring relief to refugees at a time when we are trying to disengage ourselves from Vietnam. . . . *Robert Boyd*

join the ranks

DEAR SIRS: Almost every day now we read news of growing discontent in America's armed forces. It may be a GI peace march, GI participation in the lettuce boycott, or enlisted men hooting at their commanding officer during a public ceremony. Or it might be black GIs in Vietnam demonstrating support for Angela Davis, troops . . . calling in phony body counts, or whole units refusing combat orders.

With hard work and at great risk, GIs have begun to forge this discontent into one of the most significant, and potentially effective, political movements in America. With the help of a handful of civilians, they continue to publish an increasing number of underground newspapers and run coffeehouses in the United States, Germany and Asia.

It is important that this vital work continue. Therefore, GIs need the support of those outside the military's grip. . . . Rent and printing costs, legal expenses, and all the other costs of active organizing projects need to be met.

Support Our Soldiers . . . helps fund GI organizing and counseling projects, and helps provide them with the materials necessary for their daily work. To help in this work, please send contributions to: Support Our Soldiers, P.O. Box 3061, Oakland, Calif. 94609. *Jessica Mitford*

author's query

DEAR SIRS: For research on Stuart Davis (1894-1964), I would like to hear from those having paintings, drawings, prints, correspondence, or other materials relating to the artist. Please write to me at the National Collection of Fine Arts, Smithsonian Institution, Washington, D.C. 20560.
Robert Hunter

EDITORIALS

Lindsay the Democrat

Commenting editorially in our issue of March 8 ("Lindsay and 1972") *The Nation* concluded that if either major party had a chance to become an instrument of social change, it was the Democratic Party. "Against this background," we inquired, "what does Lindsay stand to gain by remaining loyal to the Republican Party, which has not been notably loyal to him?" Construing this logic in his own terms, Lindsay has now acted on it. Or, in Richard Reeves's caption in the August 15th *New York Times*: "Lindsay Switch: Yes, But Did He have Any Alternative?"

At a time when the country desperately needs a leftward movement of wide appeal, the Republican Party has become the refuge of the arid Right. Its conservative guise is a fraud. True conservatism recognizes the need for orderly change. A politician does not become a creative conservative by capitalizing the first letter of the word. If James Buckley, elected to the Senate through the machinations of Richard Nixon and Nelson Rockefeller, has a single sensible idea in his head, he has yet to reveal it. In such company, Lindsay had no political future, nor even the consolation of going down in dignified defeat in any future bid for public office, whether in the state or the nation. Politics may make strange bedfellows, but it would be grotesque for someone who, like Lindsay, could speak of "men without jobs, families without hope, indecent housing, blighted neighborhoods, crowded hospitals, crime, poverty, polarization," to remain a Republican.

There is no puzzle, then, in what Mayor Lindsay did. The crucial question is: what will be the effect of his decision on his personal fortunes and on future national politics?

Lindsay's defection, in name as well as in fact, definitely raises the Democratic potential. As the candidates now stand, he is the most appealing, even for such a long and hazardous leap as that for the Presidency by a party newcomer. He has no consolidated power base at this juncture, but he does have broad, deep appeal to particular constituencies—women, the young, intellectuals, blacks, uneasy suburbanites, et al. If the Democrats do not nominate him—and they probably won't—it will be doubly awkward for them to nominate someone who is Lindsay's antithesis. And for a candidate who displays Lindsay's qualities, he can be a most effective campaigner.

In terms of votes, Lindsay is a symbol of the Liberal-Republican and independent positions. In 1964 (Goldwater-Johnson) it was estimated that the Liberal-Republican defection to Johnson was of the magnitude of 11 to 14 million, or about as much as George Wallace drew in 1968. In 1972, that might tip the balance.

Conversely, the GOP is weakened by Lindsay's departure. Its voter appeal is further narrowed. Some liberals may survive for special reasons—Javits, Percy, Case, Brooke—but others, like Hatfield in Oregon, are already in trouble. The Nixon-Reagan elements have California sewed up. Republican liberals in that state are in a forlorn position, with the single exception of Paul McCloskey, a fighter so tough on the offensive, and so invulnerable on

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the basis of his record and qualifications, that it is next to impossible to silence him.

In the coming campaign, liberals should not be intimidated by the outworn cliché that national stability depends on the existence of two major parties, each half liberal and half reactionary. In the America of today this is total nonsense. The need is for a party committed to responsible social change. "Polarization" is a scare word for political innocents and standpatters. Polarization exists, it is a sign of health, and it must be reckoned with. John Lindsay is now officially among those willing to face that fact and to act on it.

Reputable Snoops

Here is a true story from the *Los Angeles Times* of July 31, although the *mise en scène* is all the way across the country. Regardless of location, it concerns every American. Among those is Vern Countryman, whose "Computers and Dossiers" occupies the body of this issue.

Mr. and Mrs. Robert L. Meisner live in Croton-on-Hudson, N.Y., with their three children and two automobiles. They were informed that, as of August 11, the insurance on one of the cars had been canceled. The insurance carrier, Nationwide Insurance Co., had requested a credit check from the White Plains, N.Y. office of Retail Credit Co., stated by the insurance carrier to be "a reliable and reputable source of information for business decisions." The report gave the Meisners a clean bill, but contained "derogatory" information on their 18-year-old son Danny, who was stated to be "a hippie-type youth known to be active in various anti-Establishment concerns." Danny was also "suspected" of using marijuana on occasion, but the investigating company found no substantiation of this charge.

Up to last April 25, the parents probably could never have found out why their insurance was canceled, nor why one car was still covered. However, under a new federal law they had to be given details on request. It then developed that Retail Credit, based in Atlanta and with more than a thousand branch and affiliate offices and files on almost 50 million people, had made a routine check among the Meisners' neighbors, business associates and others willing to give information, and amassed information that caused Nationwide Insurance to cancel the policy. The *Los Angeles Times* then proceeded to make its own check on Danny and found his record to be impeccable, except for four items. He admitted that about a year ago he had "experimented" with marijuana. (His high school principal testified that this was true of 80 per cent of the graduating class.) Second, until recently he had worn his hair shoulder-long. Third, he had marched in two anti-Vietnam moratoriums in Washington. Fourth, he had registered with his draft board as a conscientious objector.

Danny said, "I certainly wouldn't call myself anti-Establishment. In this largely conservative town, anyone who has long hair is deemed to be against the Establishment and is taken to be a pot smoker."

Danny's high school principal said, "I can say very good things about Danny. He's one straight kid. He was active in politics and in many other areas. He followed through

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better than most kids in this school. He'd stick with whatever he tried."

None of the information deemed suspicious by the investigator had any bearing on the boy's driving ability. On this and other grounds, the American Civil Liberties Union has entered the case, and its legal director says that unless the offending material is expunged from the Meisners' files and their insurance is reinstated, action will be taken in the courts.

Rep. Edward I. Koch (D., N.Y.) has introduced legislation designed to strengthen a consumer's right to privacy under the existing Fair Credit Reporting Act. The original draft of the bill contained a clause which read: "No credit reporting agency shall report information which is not reasonably relevant to the purpose for which it is sought or which constitutes an undue infringement of the individual's right of privacy." According to Kenneth A. McLean, a staff member of the Senate Committee on Banking, Housing and Urban Affairs, this clause was deleted under "extremely heavy lobbying" by credit reporting agencies and insurance companies. McLean cites the Meisner case as evidence that the credit reporting act is inadequate as it stands. Mr. Koch's efforts to strengthen the Act deserve the support of every citizen who objects to being stigmatized for reasons that have nothing to do with his credit worthiness, driving ability, or whatever other qualifications are involved.

Hell in a Very Small Place

The late Bernard B. Fall's title for his book on the French defeat at Dienbienphu, *Hell in a Very Small Place,* would do well for the Atomic Energy Commission's plan to set off a 5-megaton nuclear weapon shot at Amchitka Island in Alaska this autumn. Instead the test is called "Cannikin," an alehouse diminutive for a small drinking vessel, in no sense descriptive of what will occur when a device of stupendous power—250 times the yield of the bomb dropped on Nagasaki—is detonated at a depth of 5,875 feet. Efforts in Congress to head off the blast by deleting the funds for it have failed. It is now up to President Nixon to decide whether Cannikin clinks or not. Preparations for this hellish underground bang have already cost the taxpayers more than $165 million.

There is a quiet horror about what is going on in the Aleutians as the day of wrath draws near. Amchitka is a treeless island near the western end of the chain, about 42 miles long and 2-to-4 miles wide. It was chosen by the AEC because of its remoteness and relatively mild climate. But it is not really so remote. It is only 670 miles from Russian territory, 950 miles from Tokyo and 700 miles from Honolulu. The major Alaskan city of Anchorage is 1,400 miles to the northeast, and Seattle is 2,500 miles to the southeast.

Cannikin's emplacement hole tops out on a knoll 200 feet above sea level and 4,500 feet from the Bering Sea. The hole, more than a mile deep and 7½ feet wide, has been lined with cement between the casing and the outside of the drill hole. There will be a cavity or chamber at the bottom—52 feet across and 5,675 feet below sea level—into which the Cannikin explosive will be lowered and wired up. When that is done, the hole will be plugged and Cannikin will be ready to go, with a force of something under 5 megatons, or 5 million tons of TNT.

The purpose of the upcoming Amchitka blast is to test the design, measure the yield and the X-ray flux and spectrum of a warhead for the Spartan missile, the long-range component of the Safeguard anti-ballistic missile system. The test would be the most potent device ever detonated underground by the United States and the third for the island since 1965. In October of that year, the Defense Department sponsored Long Shot, an 80-kiloton device fired at a depth of 2,350 feet as part of the DOD program on detection of nuclear tests. Next, and about ten times larger, came the AEC's Milrow event of October 2, 1969. This had a yield of about 1 megaton. It was set off 4,000 feet underground and was in effect a calibration shot for the five times larger Cannikin test. Cannikin in turn would be about 1 million tons smaller than the 6-megaton underground device detonated by the USSR last October 14 at Novaya Zemlya, in the Barents Sea area.

Until recently the AEC would say officially only that the test was "considered essential for the national security." The AEC took the wraps off the project and became more explicit just prior to the Senate debate in which members from Alaska and Hawaii made a determined but unsuccessful effort to knock out funds for Amchitka. An AEC statement said "we must have this test." Deputy Defense Secretary David Packard wrote a brief letter terming the measurements to be obtained from the test "essential, in my view, to the optimum defense deployments of Safeguard for protection of the Minuteman missile sites."

There has been vigorous opposition to Cannikin from conservationists and scientists. The conservationists banded together in a coalition to stop the blast. The Federation of American Scientists argued that the test involves environmental risks and that the need for the types of Spartan warhead to be tested in Cannikin is open to serious question. The Committee for Nuclear Responsibility announced on July 8 that it was filing suit in federal court to block the test. Joined by the Sierra Club, the Friends of the Earth, the Wilderness Society and other groups, the comittee complained that the AEC had not established a "compelling need" for Cannikin, as required by the National Environmental Policy Act and other laws. Why not wait, a number of opponents have said, until there is more light as to what may be expected from the strategic arms limitation talks with the Soviet Union?

The AEC, in its final environmental impact statement filed in June, sought to allay fears about Cannikin. It said the possibility of triggering an earthquake in the seismically active Amchitka area was "very unlikely" but could not be ruled out. Even more unlikely, said the AEC, is the possibility that the test itself or an earthquake might cause a damaging tsunami, or seismic sea wave. The Hawaiians are frightened stiff about this. In 1946 an earthquake in the Aleutians kicked up a tsunami that brought waves towering 40 to 55 feet against Hawaiian shores, killing 159 people. On another sore point, the AEC said radioactivity and heat would be trapped deep underground. It said scientists and engineers could not conceive of any way in which a venting of radioactive material could occur.

The AEC conceded that the shock of the test might kill a few thousand fish in Amchitka's ponds and rivers and in

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nearby seas, might harm twenty to 100 sea otters and disturb the nesting places of birds. It expects the effects on man to be nil. There were no evil consequences to speak of from previous nuclear experiments on the island, so far as is known. And so on. It is quite possible the AEC is correct about all this, even though the environmental statement has been challenged in some detail.

From the AEC's own environmental study we get a cold feeling that Cannikin ought to be postponed indefinitely. We do not like to think of that 52-foot cavity way below the sea expanding in a fraction of a second to the size of two football fields, with fission and fusion melting the rock and shaking the earth. It is a grievous insult to the earth itself, the long-term effects of which no man can foretell; and in this time when international alliances and the balance points of power are being adjusted, the testing of a new devastating weapon is peculiarly inappropriate. Mr. Nixon should call it off.

WILLIAM K. WYANT, JR.

That Word

On May 8, 1970 a traffic officer patrolling Interstate Highway 5 in Tehama County, Calif., was horrified to behold on the rear of an automobile a poster reading, "Fuck War." In subsequent proceedings the driver, Richard Perlman, was sentenced to thirty days in jail by a justice of the peace. Perlman's conviction was based on a violation of the penal code pertaining to the exhibition of obscene matter.

After serving two weeks, Perlman was released on bail pending appeal. The case ultimately reached the Court of Appeal. Sitting *en banc*, that tribunal directed the justice court to vacate the judgment of conviction and enter a judgment of acquittal. In a landmark decision (June 18, 1971) the multifarious meanings of "fuck" were judicially recognized and, in California at least, the word may be publicly used in some contexts without the user landing in the hoosegow.

The court considered the simple question of what was meant by the sign, "Fuck War." "Even assuming," the three judges stated, "that the words went beyond the customary limits of candor, such statement could not be considered to have related to matters of nudity, sex, or excretion, as required by the definition of obscene matter in the statute." Perlman was, rather, using it as "an expression of decisive rejection," or as an indication of "extreme dismay, anger, or aversion." The court found, furthermore, that it could not be said that the poster was without redeeming social importance.

The learned judges could, if they had chosen, have drawn a parallel with the word "screw," which in its sexual sense may nowadays be seen in print in the most respectable publications. But it has numerous other meanings—as a transitive verb, for instance, it may mean to extort. Thus Webster's Unabridged, Second Edition, gives as an example, "to *screw* one's tenants." The landlord hasn't got sex on his mind; he is merely raising the rent.

The most important social effect of the California decision, however, is in relation to the armed services. "Fuck" and its inflections is undoubtedly the word most widely used by enlisted men and company grade officers. If its use were forbidden, the men would be stricken dumb, or mass mutiny would ensue and the army would become one vast stockade. The California court has averted this catastrophe. That a word originally denoting a basic and, it has been widely assumed, most delightful human activity should become a term indicating "extreme dismay, anger, or aversion" is of course a consideration that falls outside the legal jurisdiction.

Editor's Note

David Deitch, the financial and economics columnist for the *Boston Globe*, is now preparing an article for *The Nation* on President Nixon's package of emergency measures designed to dampen the inflation at home and to rehabilitate the dollar abroad. This analysis and forecast will appear in an early issue.

The Clifford Interview

The New York Times Magazine of August 8 contained an interview with Clark Clifford by Patrick Anderson, under the title "Clark Clifford Sounds the Alarm." Anderson sums up Clifford's views at the outset: "He is convinced that President Nixon is committed to the preservation of a non-Communist regime in South Vietnam, that Nixon's demands are unacceptable to the Communists and that the result will be U.S. military forces in South Vietnam for the indefinite future." Clifford expects a major North Vietnam-Vietcong offensive this winter, which Nixon will counter with re-escalation of U.S. military involvement, perhaps to the point of using nuclear weapons. He is completely pessimistic on the Indochinese situation. What he says, in effect, is that Nixon is going through the motions of winding down the war, while still pursuing the mirage of military victory.

In the two and a half years of his Presidency, Nixon has shown himself to be a master manipulator of public opinion. If his success has nonetheless been spotty, it is because his actions have so consistently belied his words. But, first with his proposal to visit Communist China, and more recently with his belated package of economic prophylaxis, he has taken the heat off Indochina, where he is actually escalating the war under cover of protestations of his deep yearning for peace. Even as he travels about the country garnering votes for 1972, a farcical election campaign is taking place in South Vietnam, where Nixon continues to give support to his protégé Thieu. The American bombing of North Vietnam is being stepped up. American paratroops have been sent back into the area south of the DMZ, where the South Vietnamese have shown weakness in the face of probing attacks by the North Vietnamese. The Cambodians complain of the rapine and devastation caused by South Vietnamese forces operating in Cambodia against the Communists; the cure is as bad as the disease, if not worse. All this is passed over as President Nixon catches the headlines.

Nothing that Clark Clifford says is new. *The Nation* has been saying for the past five years what he is saying now. But his is a stentorian voice and a welcome addition to the anti-war sentiment. To the degree that it is heard, it will militate against Nixon's duplicity.

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COMPUTERS AND DOSSIERS

'Damn Your Cards,' said he, 'They are the Devil's Books' - Swift

VERN COUNTRYMAN

Much has been written about dossiers and computers and of the dangers to the citizen flowing from the computerization of dossiers. But most of this analysis has focused on particular facets of the problem: on credit agencies, on FBI files and lists, and the files of the inquisitorial committees of the Congress. Furthermore, the problem is often discussed in such a way as to divorce it from existing law, statutory and judicial, from precedent and from actual practice.

We regard this analysis by Vern Countryman of the Harvard Law School as the best in-depth study we have been privileged to see of the problem in all its aspects. In addition to his sharp dissection of the issues, Mr. Countryman exposes the cultural roots of the problem which he finds in three assumptions: that whatever technology can produce should be used; that anyone who can show that information is useful or comforting to him in the conduct of private or public affairs has shown a "legitimate need" for its use; and that whatever is efficient is desirable. These assumptions he directly and forcefully challenges. It is also the first paper of its sort to suggest an extension and development of the concept of privacy, which Justice Brandeis described as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." The paper deals, we feel, with issues of the highest priority. As Mr. Countryman points out, there are only thirteen years to 1984.

Mr. Countryman served as clerk to Mr. Justice William O. Douglas (1942-43); was Sterling Fellow, Yale Law School (1947-48); assistant and associate professor, Yale Law School (1948-55); dean, University of New Mexico Law School (1959-64); and has been professor, Harvard Law School since 1964. He has published, among other books, UnAmerican Activities in the State of Washington *(1951),* The States and Subversion *(with Walter Gelhorn, 1952); and* Douglas of the Supreme Court, *(1959).*

The present paper first appeared in the Texas Law Review, *May 1971, and is used with the permission of that publication and of Fred H. Rothman & Company, who control reprint rights on material appearing in the* Review. The Editors

The compiling of dossiers on individuals is not new in this country. The Federalists, enforcing the first Alien and Sedition Acts, doubtless compiled dossiers on known and suspected Jacobins. But when they had served their purpose in the prosecution of the suspects, or at least when the Alien and Sedition Acts were repealed, those dossiers were apparently discarded. I find no record of their having been used for any other purpose.

However, as our numbers have increased, as our society has grown more complex, and as we have come to recognize more and more reasons—political, social and economic—why one man may have a "legitimate" interest in the affairs of another, the business of compiling personal dossiers has multiplied. The company that contemplates extending credit to, insuring, or employing John Doe has a "legitimate" interest in knowing something about his economic condition and perhaps some of his other characteristics also. An entire industry has developed in response to this "need." And since it is more "efficient" that a new compilation should not be developed from scratch every time a new need arises, this industry maintains permanent dossiers on each of its subjects. And the final entry, on the death of one subject, becomes only an entry along the way in the dossiers on his heirs.

Because law-enforcement agencies have a "legitimate" interest in a variety of information on suspected malefactors, they also compile dossiers. Here again, it is more "efficient" to retain the record permanently, even after the case is closed—and even though it be closed with the conviction of someone else.

During World War II and in the ensuing and apparently endless period of the cold war, it has become fashionable to put trust in a variety of prophylactic measures designed to identify potential criminals before they can commit their intended crimes, and to frustrate them in their supposed intentions. Chief among these efforts are loyalty programs, a bewildering variety of laws defining sedition and other political crimes, and the antics of certain legislative committees. To meet the "legitimate need" of government to protect itself, the same governmental agencies referred to above, and some new ones, have compiled dossiers on the political beliefs, expressions and associations of all who appear, in the eyes of the compilers, to be "subversive"—in intent if not yet in deed. And it is more "efficient" that these dossiers also should be permanent.

But the demands of that most outstanding of American virtues—efficiency—do not end here. If it is efficient for any one compiler to maintain a permanent dossier on each subject, so that he need not start from scratch each time interest in the subject is renewed, it is by the same token inefficient for one compiler to begin from scratch when another compiler already has a file on the subject. Hence, a considerable interchange of data occurs among the compilers—within the generous limits allowed by law, and sometimes beyond those limits.

Even that interchange does not exhaust the demands of efficiency. Technology has provided the computer, an instrument with endless capacity to store data and to regurgitate them at lightning speed. It is, of course, "inefficient" not to use such an instrument to combine the dossiers on a given individual that are accumulated by various private and public compilers: to a considerable extent, that has been done.

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If the trend continues, the day will come when the push of a button will produce a complete "data profile" on every citizen, from his departure from the womb (or perhaps several months earlier) to some time after he enters his tomb. I cannot say precisely how far off that day may be, because our information about what goes on right now is far from complete. For the same reason, I cannot be precise about how detailed, or how accurate, the "data profile" will be.

But enough is known, I believe, to indicate that I am right about the trend. And enough is known, I also believe, to indicate that every citizen should be demanding more information about and more protection against this development than he is now disposed to demand. He should be asking more questions and asking them more insistently and at the highest levels.

Privately Compiled Dossiers

Some of those in the private sector who compile data on individuals, or who support such compilations, do so for profit. Others do so for the purpose of punishing those with whom they disagree, and still others for more benevolent reasons. We know most about the agencies that gather data for sale because Congress has in recent years concerned itself with their operations; they have been the subject of no less than five separate Congressional hearings, culminating in a new federal statute that was enacted just a few months ago. These commercial agencies fall into two categories: the credit bureau and the so-called "investigatory" reporting agency.

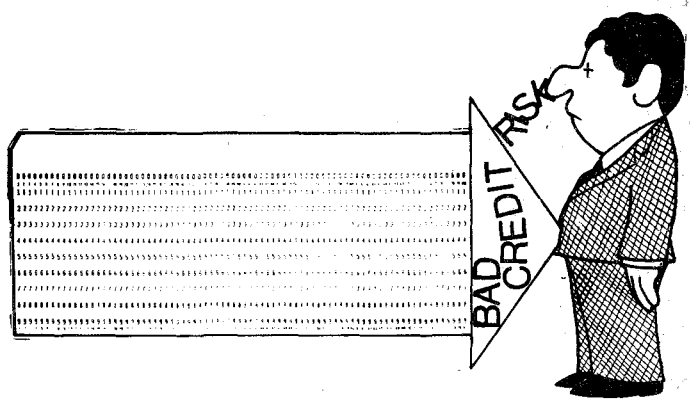
The Commercial Compilers. In a very rough way, the credit bureau is to the individual seeking personal credit what Dun & Bradstreet's reporting service is to a business organization seeking commercial credit. As consumer credit in the United States has burgeoned by more than 2,000 per cent in the past quarter century, so has the business of the credit bureau.

There are approximately 2,500 credit bureaus in the country, of which some 2,100 are members of the major trade association, Associated Credit Bureaus, Inc. The files of the bureaus affiliated with ACB include records on approximately 100 million persons, and those bureaus interchange their information. ACB is also operating under a 1933 antitrust consent decree which requires it to interchange data with the 400 credit bureaus not affiliated with it. In 1968 ACB engaged International Telephone & Telegraph Corporation to provide a computer service to facilitate the interchange.

The largest credit bureau operation outside the ACB is the Credit Data Corporation, which operates in California, Illinois, Michigan and New York, has files on 27 million persons, is adding files at the rate of half a million a month, and is fully computerized. While there is doubtless some overlap between the 100 million ACB files and the 27 million Credit Data Corporation files, the combined accumulation just about covers the 131 million of us who are older than 18—particularly since most of the 93 million of us who are married will be combined in some 46 million files with our spouses.

What sort of information do the credit bureau files contain, and where does it come from? The content, and its reliability, are pretty well dictated by the three principal sources from which the credit bureaus draw:

(1) Their own subscribers—the merchants, banks and finance companies who buy most of their reports—supply to the bureaus such information as they obtain on their own credit customers as to employment, approximate income and credit performance. There are at least three significant limitations on this data: *(a)* The credit bureau files will not reveal the subject's net worth, or whether he is solvent or insolvent, but only whether or not his accounts with the bureau's subscribers are delinquent. Those who extend credit in reliance on a credit bureau report do so on the simplistic assumption that anyone who is managing to keep up his present payments should be able to assume one more debt. *(b)* The credit bureau files will not reveal the approximate amount of the subject's debts, since many creditors are not subscribers. *(c)* When subscribers report that the subject's account is delinquent, they are rarely moved to add, where that is the case, that there is a bona fide dispute over the amount owed (perhaps because a computer has gone awry in the billing procedure, as they all too frequently do) or that there is a dispute over the quality of the merchandise delivered.



(2) The more enterprising bureaus check official records for notices of such things as arrests, lawsuits, judgments, bankruptcies, mortgages, tax liens, marriages, divorces, births and deaths. Here again, there are limitations: the possibility of mistaken identity is substantial, and official records frequently do not disclose the ultimate disposition of such things as arrests, lawsuits, judgments, tax liens and mortgages.

(3) Most credit bureaus also maintain a news-clipping service—with some, this substitutes for checking official records. Obviously, this source contains even more danger of error and omission than does the check of records.

Both Congressmen and the news media, during the Congressional hearings on the subject, focused on the man who is denied credit because of erroneous adverse information in credit bureau files. But, since a case of mistaken identity means not only an incorrect adverse entry in one file but also the omission of a correct adverse entry in another file, and since almost all credit files understate the debts of their subjects, it is obvious that misleading credit bureau reports lead also to some granting of credit which should not have occurred. It is no coincidence that,

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as consumer credit expanded, so did consumer bankruptcies—from 8,500 in 1946 to 178,000 in 1970. If a creditor were to compare the report he received from the bureau with the debts scheduled by a subject in his bankruptcy proceeding, he might conclude that the report was not worth the 35¢ to 75¢ paid for it. (That is what it costs the subscriber to learn what reposes in the compiler's file at the moment he makes inquiry. If he wants the file brought up to date by calls to other subscribers, he must pay an additional fee.) During hearings held in Washington, D. C. in March 1968, a New York Congressman asked for a demonstration of Credit Data Corporation's high-speed computerized retrieval of his New York City credit file. Within the time consumed by 6 pages of printed hearing record, the report came back—on one bank loan as of June 1967, and nothing else. The Congressman's response: "A very inefficient system, thank God!"

Upon entries of such fragile reliability is your "credit rating" built. And when the credit bureau engages also in debt collection—as many of them do, finding their ability to affect the credit rating an effective collection tool—the reliability of the entries is even further threatened by a built-in conflict of interest.

But, as the credit bureaus themselves are fond of stressing, they collect only facts—if what their subscribers report to them and what they read in the newspapers can be regarded as facts. They do not engage in affirmative investigations of their subjects, save as they may on occasion join with local merchants to sponsor the Welcome Wagon lady, who reports back to the merchants on the apparent worldly needs of the newcomers she visits and to the credit bureau on their apparent credit worthiness —and on where the newcomer came from, so that his file can be obtained from a credit bureau at his former location.

For these reasons, credit bureau files do not satisfy some who contemplate commercial relationships with their customers—particularly prospective employers and prospective insurers. Such clients turn to the "investigatory" reporting agency. Congressional committees heard from representatives of the country's largest agency of this sort —Retail Credit Company of Atlanta, with 1,225 offices, 7,000 inspectors, and files on 48 million persons. Retail Credit is not yet computerized.

Inspectors for Retail Credit not only check public records and clip newspapers; they also interview friends, neighbors, former neighbors, acquaintances, employers, former employers, business associates—anyone who may know something, or have an opinion about, the subject. For life insurance companies, Retail Credit inspectors inquire about, among other things, the subject's drinking habits (including the reasons for his drinking), any domestic difficulty, any adverse criticism of "character or morals," and whether his living conditions are crowded or dirty.

For automobile insurers, they will inquire about, among other things, the quality of neighborhood, business reputation, morals and "antagonistic-antisocial conduct." Auto insurers are convinced that there is a correlation between frequency of accident and all of these factors except antagonistic-antisocial conduct, and that both immorality and antagonistic-antisocial conduct would impair the subject's effectiveness as a witness in the event of litigation. The latter consideration, of course, should dictate an inquiry also into harelips, unsightly scars and birthmarks, and the use of deodorants. For employers, Retail Credit will report whether the subject has any "known connection with a 'peace movement' or any other organization of a subversive type," and whether he is reported by others to be "neurotic or psychotic."

When Congressional investigators began to worry about the reliability of some of the opinions thus solicited, spokesmen for Retail Credit had two assurances:

(1) Its inspectors are carefully trained persons of "unusual inspection ability." This assurance lost some of its force when inquiry revealed that these highly qualified, well-trained sleuths commanded a starting salary of $475 to $500 per month, that they prepared anywhere from two to sixteen reports per day (which Retail Credit sold for from $4 to $200 apiece), and that half of them had no more than a high school education and another 30 per cent were college dropouts.

(2) Any adverse information not coming from public records is confirmed from a second source or reported as unconfirmed. Whatever comfort might otherwise be drawn from this assurance is somewhat qualified by evidence that at least one well-trained, highly qualified inspector, who claimed to have been told by two sources that the subject had served a prison term, reported what he had been told as an unqualified fact, although he could find no confirmation in court or prison records.

The legislators wanted to know who has access to the files of these commercial compilers. Only "reputable" business organizations, they were told, with a "legitimate" business interest. However, spokesmen for the credit bureaus admitted that there had been instances when an employee of a subscriber to a credit bureau had obtained a report for purposes unrelated to his employer's business, and Retail Credit's spokesman admitted that it sometimes gave out reports as a "favor"—for example, when an executive of a subscriber asked for information on a man being considered as a new minister for his church.

Moreover, the compilers had been under interrogation by Congressional committees for more than a year when CBS News tried an experiment. Using a fictitious company name, it sent out twenty letters to credit bureaus, requesting reports on named individuals. It received ten reports and offers of two more if it would sign a subscriber's contract. On a second round, the fictitious company sent out twenty-eight letters. This time it did not state that it was considering granting credit—it simply asked for a full report. And this time it asked only about individuals who had been complaining to Congressional committees about the credit bureaus. It received only seven of the requested reports—plus one more when it signed a subscriber's contract.

The dossiers of the commercial compilers are available also to the government. This includes not only such governmental credit-granting agencies as the Federal Housing Administration and the Veterans Administration, who buy such reports just as do private subscribers, but also such law-enforcement agencies as the FBI and the

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Internal Revenue Service. Members of ACB and the Retail Credit Company make their files available to the law enforcers "as a public service." The Credit Data Corporation took a different view, declining to turn over its reports to the IRS. It was then met with a statutory summons calling for "all credit information relative to" named taxpayers. When Credit Data refused to obey the summons, it was served with a judicial order of enforcement pursuant to the statute, requiring it to comply on payment by the IRS of 75¢ per report, the fee which Credit Data charged its regular subscribers. On appeal, Credit Data won a great victory. The decision was affirmed in all respects save that the case was remanded to determine the "fair value" which IRS must pay for the reports, the rate paid by subscribers not being taken as conclusive because subscribers supply "valuable credit information" to Credit Data.

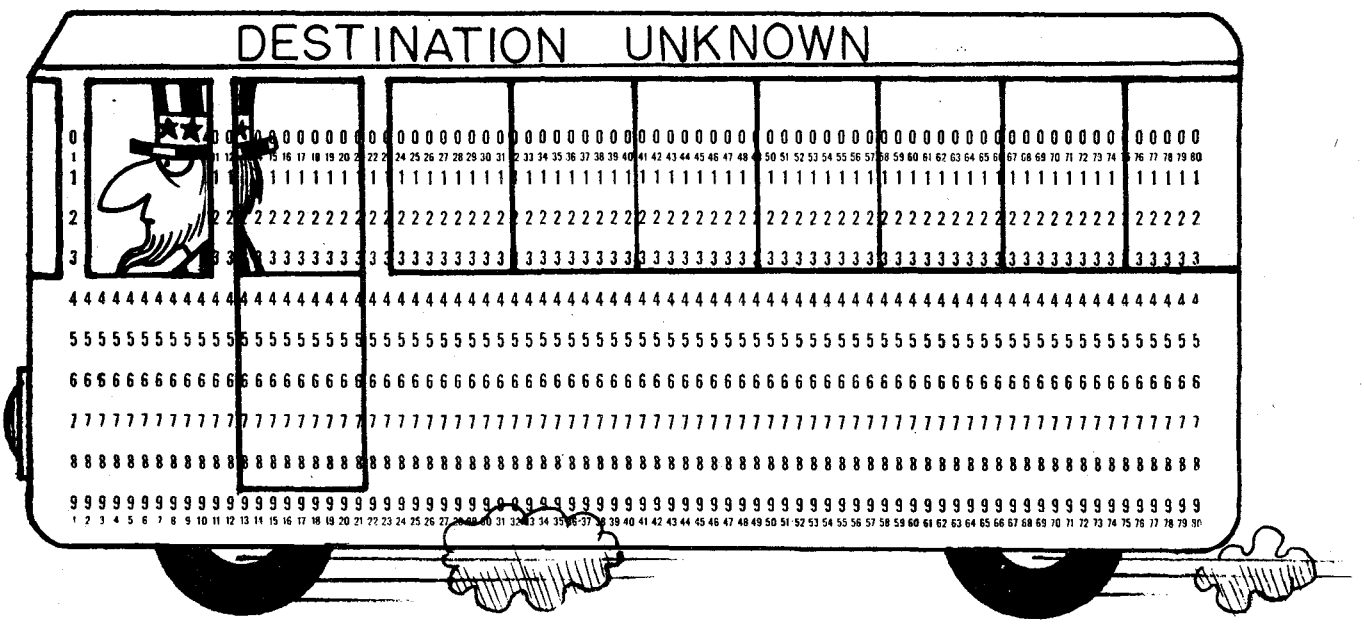
This result was not surprising. In a long line of cases, the Supreme Court has sustained judicial enforcement of an administrative agency's statutory subpoenas against Fourth Amendment attack, if the subpoena sought testimony about the affairs of, or the records of, the person subpoenaed; if the subpoena was sufficiently specific to satisfy the Fourth Amendment; if the administrative inquiry was authorized by Congress, and if the evidence sought was relevant to the inquiry—the Court's application of the last two requirements when its enforcement order was sought being held to satisfy the Fourth Amendment's requirement of probable cause.

More than forty-five years ago the Supreme Court also summarily affirmed a decision that no Fourth Amendment question was even presented when the IRS, investigating the tax liability of a bank depositor, summoned the bank to produce its records. And after the Credit Data case was decided, the Supreme Court unanimously extended that ruling to cover an IRS summons to the taxpayer's employer and, by dictum, to any other third person with no established legal privilege, such as an attorney, where the taxpayer has "no proprietary interest of any kind" in the records subpoenaed. The Fourth Amendment, therefore, offers no discernible protection to the subject whose file in a credit bureau is subjected to an administrative subpoena or summons of a governmental agency showing a "legitimate" interest in its contents.

No matter who else may see the file, however, the commercial compilers are uniformly steadfast on one point —the subject himself must never see it. Three reasons are given, one laughable and two believable. First, if the subject ever got his hands on the file, even in the compiler's office, he might destroy it. Second, to let the subject see the file would be to reveal the compiler's sources and would tend to "dry up" those sources. Third, if the "file" consists of a computer printout, the subject wouldn't be able to understand it. Doubtless the second reason should be expanded to say that nondisclosure of the files protects not only the compiler's sources but also the compiler himself, from trouble, including litigation, with the subject.

As a result, many subjects have not known, when they were denied credit, or a job, or insurance coverage, that the denial might have been caused by an adverse report from a commercial compiler. The subject who did learn of that fact, and who believed that the adverse report was erroneous, seldom obtained legal relief. If he sued on a theory of defamation or interference with economic expectations, he encountered a qualified privilege, based on the subscriber's "legitimate" interest in his affairs, which protected the compiler who was not guilty of gross negligence or malice.

If he resorted, instead, to an action for invasion of his common-law right of privacy he confronted, first, the fact that the famous law review article by Warren and Brandeis which launched that right in American jurisprudence was concerned only with the publicizing, albeit accurately, of private matters (not matters of public record) in the news media. If he persuaded the Court that the concept of a right of privacy had now developed to the point where it protects against offensive intrusion into his private affairs regardless of publicity, he might again have found



that his protection against intrusion was qualified by the "legitimate" interest of the user of the files.

As previously noted, Congressional investigators were impressed by the plight of those whose dossiers were compiled—at least where the dossiers contained erroneous adverse information. The compilers detected that they were impressed and decided that they could not fight the move for reform and had better join it. The result was the Fair Credit Reporting Act of 1970.

This Act, applicable both to credit bureaus and to "investigatory" reporting agencies, attempts to guard against inaccurate or stale information in the reports and to restrict their use by providing that:

¶The compilers must maintain "reasonable procedures" to eliminate from their reports bankruptcies after fourteen years and other adverse information after seven years.

¶The compilers must keep their public record entries in employment reports up to date to the extent that the public records are up to date, and the investigatory agencies must confirm their adverse interview information at least three months before reporting it.

¶Users of investigatory reports must notify the subject that such a report is being made; users of credit or investigatory reports must advise the subject whenever credit, insurance or employment is denied "wholly or partly because of" the report and must identify the reporting agency; and compilers reporting adverse public record information for employment purposes must advise the subject of that fact.

¶Any compiler, on request of a subject, must disclose to him the "nature and substance" of the information on him in its files (but not the file itself); credit bureau compilers must disclose also the sources of their data; and all compilers must reinvestigate any item which the subject disputes and, if it does not correct the item, include in future reports his statement of not more than 100 words describing the dispute—unless the compiler has "reasonable grounds to believe" the statement is "frivolous or irrelevant."

¶The compilers must maintain "reasonable procedures" to confine the furnishing of their reports, without written consent of the subject, to those who have "a legitimate business need" for them.

¶Compilers must not, without written consent of the subject, furnish to a governmental agency more than name, address and place of employment of a subject, except in connection with licensing, governmental grants or other business transactions where government has a "legitimate business need"—and except in response to court order.

The Act also authorizes damage actions when there is negligence in failing to comply with the Act, punitive damages for willful noncompliance with the Act, and administrative enforcement by the FTC. It immunizes compilers and their sources of information from any other liability save for false information "furnished with malice or willful intent to injure" the subject. And it imposes criminal penalties for officers or employees of compilers who "knowingly and willfully" make unauthorized disclosures of information and for any person who "knowingly and willfully" obtains such information "under false pretenses."

The entire reach of the Act—about which I will have more to say later—is to accuracy of and access to the reports. No attempt is made to limit their contents. The report to which the Act applies, whether issued by a credit bureau or an "investigatory" agency, is defined to mean any communication bearing, not only on credit but on "character, general reputation, personal characteristics, or mode of living."

The Punitive Compilers. There has been, so far as I can discover, no official investigation of private compilers who assemble dossiers for the purpose of punishing those with whom they disagree. From what I have been able to learn and observe of these compilers over a quarter of a century, they are sponsored and staffed by right-wing extremists. This is not to say that right-wing extremists are less restrained by scruples than left-wing extremists. The much simpler explanation is that official investigations of extremist groups have, with rare exceptions, been aimed at those on the Left end of the political spectrum—although they tend to hit anyone to the Left of the right-wing extremists. There are two corollaries to this fact: first, private punitive compilers rely for information almost entirely upon official investigations, and there is not enough information available to compile dossiers on right-wing extremists. Second, in the absence of official investigations to whet public interest, there would be no substantial market for dossiers on right-wing extremists if they could be compiled.

Some of the punitive compilers attempt to operate for profit. One such is American Business Consultants, organized by three former FBI agents, which operated effectively, if not at great profit, during the heyday of Sen. Joseph McCarthy. It published the newsletter *Counterattack*, which provided dossiers on those deemed not sufficiently anti-Communist, with special emphasis on the news media, writers and publishers, and *Red Channels*, which focused on those thought similarly deficient in the entertainment business. Other compilers, such as the Americanism committees of some American Legion posts, are motivated by their version of patriotism. Still a third group, which includes the John Birch Society and Aware, Inc., which also flourished in the entertainment industry during McCarthy's reign, profess patriotism.

The punitive compilers' principal aim is to cost the subject his employment. Since their dossiers are neither solicited, nor in many cases even wanted, by the subject's employer, they are not well situated to invoke the "legitimate" needs of the employer as a justification in either a defamation or a privacy action. Offsetting their apparent legal vulnerability, however, is the fact that most, if not all, of them are either completely judgment proof or incapable of responding in damages for the full injury they have caused.

Both of these facts were dramatically demonstrated by a distinguished and courageous graduate of the University of Texas, John Henry Faulk, who lost his position with CBS in 1956 when Aware, Inc. published his dossier—largely based on erroneous information in the files of the House Un-American Activities Committee. In part, also, Mr. Faulk was dismissed because of an advertising boycott that was organized by the owner of a chain of

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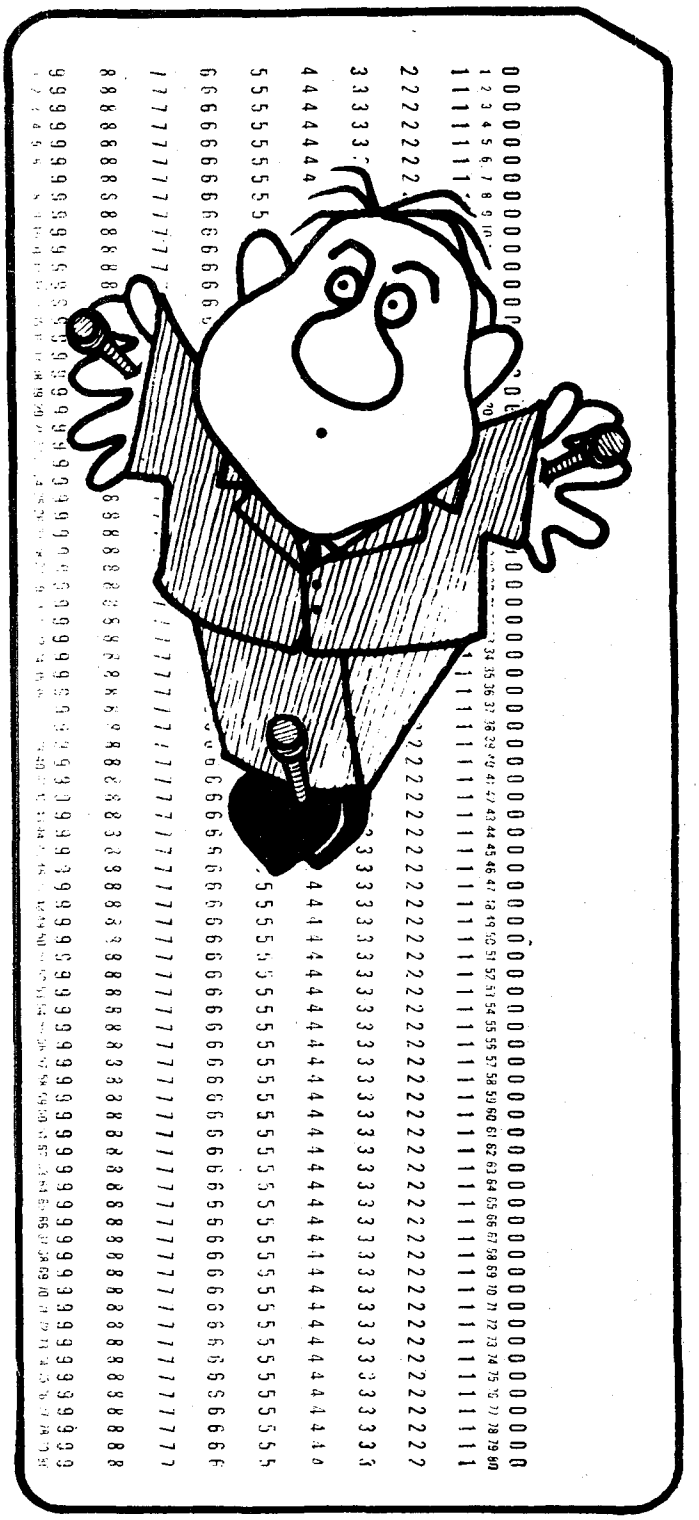
grocery supermarkets after the Aware bulletin was published. Faulk sued Aware, one of its employees and the supermarket owner for libel, realizing that Aware and its employee were not capable of responding in damages in any significant amount.

After a trial in which the court ruled that the defense of qualified privilege was not available and that defendants had failed to prove the defense of truth, the jury returned a verdict for $3.5 million—of which $1 million was actual damages against Aware, its employee and the supermarket owner; $1.25 million was punitive damages against Aware, and $1.25 million was punitive damages against its employee. There was no award of punitive damages against the supermarket owner because he died shortly before the case went to the jury. The judgment against him was settled with his disappointingly small estate for $175,000. After an appeal by the surviving defendants, during which they were castigated as "malicious" and "vicious" purveyors of libel, the judgment was reduced to $450,000 against Aware and $100,000 against its employee, no part of which was collectible. No private remedy, even for false reports, will avail the victims of punitive compilers who are as irresponsible financially as they are otherwise.

The Benevolent Compilers. Many who compile personal dossiers, or who support their compilation, have no interest in the individual subjects. They are interested in groups. In this category of data collectors are government officials and business executives, who seek to make informed decisions and plans, and scholars (particularly social scientists), who would promote understanding and aid decision making and planning. But though they are interested in groups, most of the information about groups must come from, and relate to, individuals.

At first blush it might seem that such information could be obtained and compiled without preserving a record of individual identity. Unfortunately, some key to the identity of the subjects must be retained if group compilations are to be kept up to date and if they are to be adapted for uses not contemplated at the time of their original accumulation. And as long as keys to the identity of those in the group are retained, these compilations are a potential source of personal dossiers, either because they fall into unauthorized hands or because the policy of the compilers changes.

Many of those who use group compilations are so single-mindedly devoted to their own purposes as to be heedless of this danger. Thus, a committee of the Social Science Research Council proposed in 1965 that the Bureau of the Budget establish a Federal Data Center to collect and computerize all machine readable data from all federal agencies, for use both by the government and by individual scholars. The report was eloquent on the "efficiency" of such an operation, but took account of the threat to individual privacy only to the extent of suggesting that where a government agency had obtained data under a pledge of confidentiality, "it is often possible to disguise the information in such a way that specific data cannot be traced to any individual respondent." The bureau referred the recommendation for review to a research analyst employed by Resources for the Future, Inc., a private foundation. He endorsed the proposal in a report much concerned with organizational and operational problems which did not even mention problems of privacy. The bureau next created a task force, consisting of one statistician and five academicians, to consider the problem. The task force also endorsed the proposed National Data Center, but its report took account of hearings on the subject wherein Congressmen had shown themselves considerably alarmed by the danger to privacy. The task force viewed this criticism rather lightly, however, since



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it thought that Congress could define an enforceable standard for access to the data in the center, and that the technical possibility that the federal computers might themselves be tapped by other technological means could be met by unspecified "organizational and technical means . . . available to control and limit the risks."

I shall have more to say about the National Data Center concept later; here I want to add an illustration from my own experience of the scholar's insensitivity to problems of privacy when his thirst for knowledge is aroused. Early in 1969, a private foundation sent out to graduate students in colleges and universities a questionnaire asking their opinions on a variety of subjects ranging, if I remember correctly, from drug use to forcible overthrow of the government. Since the respondents were to sign these questionnaires, one graduate student phoned me to ask if there was any danger, despite the foundation's assurance of confidentiality, that his replies might come into the hands of a government agency. I advised him that, in my judgment, the foundation would have no defense to an administrative or legislative subpoena. Apparently in order to spread this valuable legal advice to other graduate students, the man to whom I talked reported it to the *Harvard Crimson* which printed it.

I thereupon received a long letter of admonishment from a Harvard professor of government. First, he explained that he had nothing to do with the particular questionnaire, but assured me, on the basis of his thirty-five years of experience, that it was "typical of those used by both academic and commercial pollsters." Second, he explained to me—along lines similar to those given above—why the identity of those polled must be preserved. Third, he expressed doubt that any government agency would seek to obtain the information. Fourth, though he was not a lawyer, he ventured the opinion that the courts would very likely create some sort of privilege to block a government subpoena. Fifth, he pointed out that advice such as mine might well reduce the number of responses to the questionnaire. Finally, he urged me to "reconsider" and to "issue another statement on the issue." I declined his invitation on the grounds that I thought my legal advice better than his and that I thought the students were entitled to have that advice so that they, rather than he, I, or the foundation, could do their own speculating about the likelihood of a government subpoena.

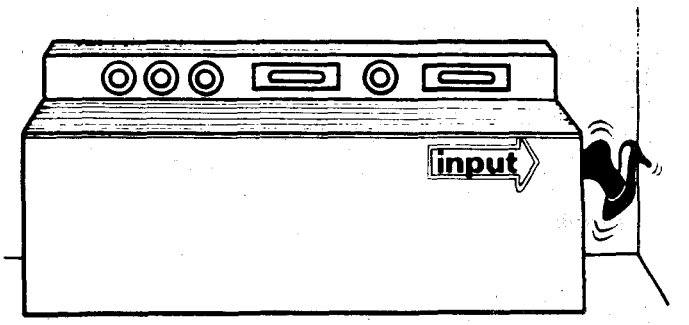
Not all group compilers are insensitive to the privacy problem but, even when they are aware of the danger, there is not much they can do to forestall it—once they have amassed their compilations—beyond attempting to guard the identity of their subjects and hoping that their successors in control of the compilation will be similarly scrupulous.

The reality of the danger is made vivid by the steps taken by the United Planning Organization of Washington, D.C., a private organization devoted to combating poverty. In the course of its work, UPO has found it useful to compile data from public records on such matters as juvenile arrests, school dropouts, evictions and welfare payments. To guard the identity of its subjects, UPO transferred all its data to a trustee under an irrevocable trust, with strictures which permit UPO to have continued access to it only as long as it does not reveal the identity of its subjects. Under the terms of the trust, UPO apparently will indeed lose access to the data if it changes its policy and identifies its subjects, or, possibly, if one of its officers or employees makes an unauthorized disclosure. But, by that time, personal dossiers on all of its subjects may be in someone else's computer.

Publicly Compiled Dossiers

If our information on private compilers of dossiers is incomplete, our information on governmental compilers is fragmentary. Most of what we do know comes from disclosures made by the news media and from sporadic hearings conducted by a Senate subcommittee between 1960 and 1967. Some additional information emerged from hearings in early 1971 before another Senate subcommittee.

In some instances the government can compel a subject to provide information about himself. Obvious examples are the tax and census returns, of which more later. However, most governmental compilers rely for most of their information on the technique used by the Retail



Credit Company of Atlanta—they interview neighbors, associates and acquaintances of the subject. The investigators are better paid, and one hopes better qualified and better trained, than Retail Credit's inspectors, but the superiority may not be enough to inspire great confidence in the objectivity of their results. Most of us in academic life are familiar with the FBI agent and the military investigator who come to inquire about former students seeking government employment or a military commission. Most would agree, I believe, that there is no faster way to get the visitor out of the office than to make clear that you have nothing derogatory to say about the subject. And I can testify that the visitor will depart almost as rapidly if, in a case where you have something to say that might conceivably be considered derogatory, you tell the investigator you want your secretary to take down your statement so that you can send a copy to the subject.

Governmental compilers have another source of information disclaimed by Retail Credit, whose representatives emphatically and repeatedly denied that it ever resorted to wire tapping or bugging. Governmental compilers resort to both. Because of what it reveals, both as to their attitudes about individual privacy and as to the feasibility of legislative efforts to protect privacy, it will be instructive to survey briefly the history of their use of these devices. (See also "Thirty Years of Wire Tapping" by Athan G. Theoharis, *The Nation,* June 14.)

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In 1928 the Supreme Court held that government wire tapping did not violate the Fourth Amendment. In the Communications Act of 1934 Congress made it a crime for anyone, without authority of the sender, willfully to intercept any communication by wire or radio and to divulge the contents of the intercepted communication to any other person. Thereafter, the Court held that, because a wire tap was illegal, evidence so obtained, including the "fruit of the poisonous tree," was inadmissible in federal courts.

Despite the explicit finding that federal agents commit a federal crime when they tap telephones, the FBI continued the practice, which it had begun in 1931, until March 1940, when Attorney General Jackson ordered it stopped. In May 1940, however, President Roosevelt issued a secret directive, whose existence was not made public until after his death, ordering wire tapping resumed for "persons suspected of subversive activities against the Government of the United States, including suspected spies." Thereafter, Attorney General Biddle in 1941 announced that the Department of Justice intended to use wire tapping in "espionage, sabotage, and kidnapping cases when the circumstances warranted," and President Truman in 1947 approved a proposal by Atty. Gen. Tom Clark that wire tapping be used "in cases vitally affecting the domestic security, or where human life is in jeopardy." In 1964 President Johnson issued a directive forbidding wire tapping by federal agents, except in national security cases. And in 1965 Attorney General Katzenbach testified that, "Under present law, [wire tapping] should be permitted only where national security is involved" and acknowledged that the department had sixty-two wire taps then in effect "under my specific direction." In 1967 Atty. Gen. Ramsey Clark issued a memorandum requiring prior written approval from the Attorney General for any federal wire tap or electronic bugging save in "national security" cases which "shall continue to be taken up directly with the Attorney General in the light of existing stringent restrictions."

Since the Communications Act contains no exceptions, it is evident that the Department of Justice has been violating that Act for most of the time since its enactment. From time to time spokesmen for the department have argued that the contents of wire taps are not "divulged"—and hence the Communications Act is not violated—when they are merely communicated from one federal agent to another, but this proposition has never been tested in the courts. The Department of Justice has never seen fit to prosecute an FBI agent or any other federal agent for violation of the Communications Act, even in cases where convictions have been reversed because the contents of wire taps were divulged in court.

The practice of electronic bugging was governed by a series of decisions beginning in 1942 which held that the Fourth Amendment was not violated by the interception of communications by means of detectaphones or informers wired for sound, as long as the interception was accomplished without a physical trespass on defendant's premises.

Regardless of the state of the law or of the current content of executive directives, FBI Director Hoover has annually since 1965 assured the House Appropriations Committee that every wire tap undertaken by the FBI has been "approved in advance and in writing by the Attorney General," and that all taps were limited to "national security" or "internal security" cases. But less than two months after Hoover gave that testimony in 1969, an FBI agent testified, during the trial of Cassius Clay under the Selective Service Act, that the FBI had tapped the wires of Martin Luther King, Jr. for four years before his death in 1968. Hoover then produced his version of an "approval in writing in advance by the Attorney General"—a memorandum written by one of Hoover's own subordinates, reciting that in 1963 Atty. Gen. Robert Kennedy, now also deceased, had inquired "if it was feasible to use electronic devices" to check into allegations that Dr. King "had Marxist leanings." The House Appropriations Committee found no reason to question Hoover's credibility when he appeared before it the following year and again testified that "all" wire taps "were authorized in advance in writing by the Attorney General."

Meanwhile, both constitutional and statutory requirements applicable to wire tapping and electronic bugging had changed. In 1967 the Court in *Berger* v. *New York* invalidated a New York statute authorizing electronic bugging with prior court approval, in a case where physical trespass was involved, because the statute did not satisfy the Fourth Amendment's requirements of specificity as to the crime involved or the conversations to be overheard. Later in the same year, in *Katz* v. *United States*, the Court concluded that the Fourth Amendment applied to both wire tapping and electronic bugging, regardless of physical trespass, thus requiring prior court approval for employment of either device under a procedure which would satisfy the specificity requirements of *Berger*.

In the Omnibus Crime Control and Safe Streets Act of 1968 Congress amended the Communications Act of 1934 so that its prohibition of interception and divulgence of communications is confined to radio communications, and established a procedure for judicial approval of wire tapping and electronic bugging which arguably does not meet the requirements of the *Berger* case.

That Act also contains the following remarkable provision:

> Nothing contained in this chapter or in section 605 of the Communications Act of 1934 . . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means or against any clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as necessary to implement that power.

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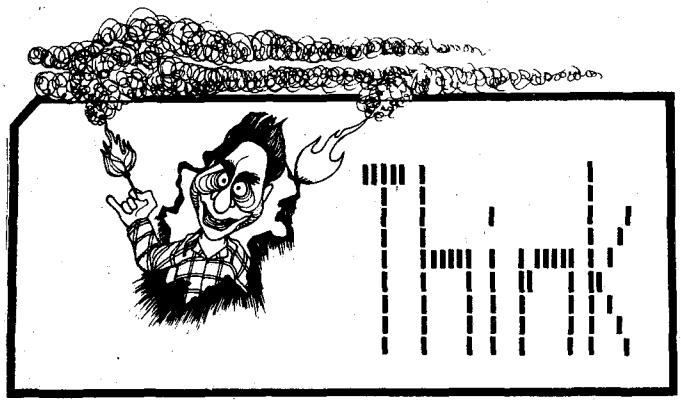
Whatever other effect this provision may have, it has emboldened Attorney General Mitchell to argue that the President has "inherent power . . . derived from the Constitution itself," free from judicial review under the Fourth Amendment, to employ wire taps and electronic bugging (*1*) "to gather foreign intelligence information" including "information necessary for the conduct of international affairs and for the protection of national defense secrets and installations from foreign espionage and sabotage"; and (*2*) "to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to use unlawful means to attack and subvert the existing structure of government." This argument was first made and accepted by Judge Julius Hoffman in a case where the domestic threat to the



"structure of government" consisted of the disturbances at the Democratic National Convention in Chicago in 1968. It has been rejected by the U.S. Court of Appeals for the Sixth Circuit and by a federal district court in California, and appeals are pending.

The 1968 Act also requires annual reports to Congress of all court-approved wire taps and bugs obtained under the Act by either federal or state authorities. In 1969, the first full year that the Act was in operation, these reports revealed thirty federal interceptions and 241 state interceptions, 176 of the latter being in New York alone. For the second year, there were 180 federal interceptions and 403 state interceptions, including 213 in New York and 129 in New Jersey. By these taps and bugs, federal authorities in one year listened in on more than 146,000, and state authorities on more than 244,000 conversations. But the federal figures do not reveal all federal wire taps—the government is acting on Attorney General Mitchell's contention that no court approval is required for tapping and bugging in "national security" cases. On one day, in March 1970, the FBI operated thirty-six wire taps and two bugs in such cases.

Snooping in the Mails

The governmental compilers have still another source of information not available to private compilers—the "mail cover," provided by the Post Office Department, which supplies the name and address of anyone sending mail to a suspect and, if desired, a facsimile of the sender's handwriting. The Post Office provides this service on request to any federal or state law-enforcement agency, and averages about 1,000 mail covers a month.

One of the chief users of the service is the Internal Revenue Service, but both it and the Post Office declined to supply Congressional investigators with the names of those subjected to such surveillance—not only because some were still under investigation but also because such disclosure would constitute an invasion of the privacy of those investigated and found innocent of tax violations! Although not specifically authorized by statute, the Post Office finds its authority for the practice in a general statutory power to prescribe rules and superintend the business of the department, and courts have held that it does not violate provisions of the Criminal Code forbidding delay of the mails.

So much for sources. What of the official dossiers compiled from them? Starting with the proposition—probably quite literally true—that God only knows what is contained in the files of the CIA, some information is available about the files of the more obvious compilers.

The FBI. Congressional committees occasionally hear something *about* the FBI, but save for J. Edgar Hoover's annual appearances before appropriations committees, they never hear *from* the FBI. From the director's appearances we are advised that the FBI's computerized National Crime Information Center, which is tied to twenty-four computerized terminals throughout the country, contains in excess of 1.7 million personal files, as well as more than 195 million sets of fingerprints. The latter collection (with a substantial assist from state police forces and the Selective Service System, and a lesser one from visitors to FBI headquarters who are persuaded to ink their fingers) is increasing at the rate of about 7 million a year. Even with some allowance for foreigners, it must be approaching 100 per cent coverage of the adult population of the United States.

One can only speculate as to the contents of the 1.7 million files. They are not to be disclosed to the public, save as Hoover sees fit to reveal their contents in a book, an article or a speech. But we can be sure that they are not confined to information related to enforcing the criminal laws. Since 1947 the FBI has been investigating, under the federal loyalty-security program, federal employees and applicants for federal employment; somewhat later the program was expanded to cover the personnel of those who contract with various agencies and departments of the government. Investigations under that program delve even more deeply into the morality, beliefs and associations of the subjects than do the investigations conducted for private employers and insurance companies by the Retail Credit Company. From a careful study of all available data, Prof. Ralph Brown concluded in 1958 (*Loyalty and Security*) that the federal program then covered more than 13 million people, or one-fifth of the national labor force. The same fraction today would produce a figure in excess of 16 million. Professor Brown also estimated that the cumulative total of those dismissed under the program in 1958 was in excess of 10,000. It is a fair guess that their names, and the names of many others who were not dismissed but about whom derogatory information was recorded, are included in the FBI files. But there is no reason to suppose that all of them are included in the 1.7 million files reported in the National Crime Information Center.

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If that were all, most of us who have never worked for, or sought to work for, the executive branch of the federal government or its contractors, and who have never done anything which would be likely to make us suspects of a federal crime (including the burgeoning list of political crimes), could rest easy so far as the FBI files are concerned.

But that is not all. Under the Emergency Detention Act of 1950, the President is authorized to declare an "Internal Security Emergency" in the event of invasion, declaration of war or "[i]nsurrection within the United States in aid of a foreign enemy." In that event, the Attorney General is to apprehend and incarcerate "each person as to whom there is reasonable ground to believe that such person will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage." Obviously, speed will be of the essence and any diligent Attorney General charged with enforcing this Act must have a list of suspects prepared in advance. *The Washington Post* recently remarked that the Department of Justice does maintain such a list and made a "conservative guess" that it contains 10,000 names. Data alleged to support such a list are doubtless lodged in the files of the FBI.

The FBI has long operated under a Department of Justice order providing:

> All official files, documents, records, and reports in the Department of Justice shall be regarded as of a confidential nature, and the content thereof shall be disclosed only in the performance of official duties.
>
> Except upon specific authorization of the Attorney General, no officer or employee shall forward to any person outside the Department of Justice . . . any information obtained from the Federal Bureau of Investigation. . . .

But there are vague authorized exceptions. Department regulations allow for exchange of "identification records, including personal fingerprints voluntarily submitted," with "law-enforcement and other governmental agencies," and for the operation of "a central clearinghouse of police statistics . . . and a computerized nationwide index of law-enforcement information under the National Crime Information Center." And Hoover has said that "the FBI has long followed a policy, approved by several Attorneys General, of relaying information believed to be of interest to other Government agencies."

The official position remains that the contents of FBI files are not to be disclosed to private parties, but there is room for doubt about operations in the field. Do the FBI agents who receive information from Retail Credit Company and the credit bureaus ever return the favor? Mayor Alioto of San Francisco recently told a Senate subcommittee that he had proof that the FBI had supplied information to *Look* for an article charging him with underworld connections. The Department of Justice replied that an FBI agent had not "furnished," but had "confirmed," information which the magazine might have obtained from other federal agencies and that the agent involved had been disciplined and forced to retire.

Internal Revenue Service. Most adults in the country are required to initiate a file with the IRS by filing a tax return. The file is augmented when the IRS launches an investigation of tax liability or has to resort to collection efforts. In some instances, those efforts are quite strenuous.

In 1965 the Commissioner of Internal Revenue admitted to a Congressional committee that the Service had in the past used two-way mirrors and bugging devices in conference rooms where taxpayers and their lawyers met prior to and during discussions with IRS agents; and that some agents, in an excess of "zeal emanating from the highest motives," had employed illegal bugs and wire taps. He assured the committee that all such practices had been terminated. Later he advised the committee that agents who engaged in illegal eavesdropping had been disciplined by reprimand and transfer and that there had been some voluntary separations from service. There was no mention of criminal prosecution.

Another practice, not disavowed by the IRS, involved the opening of a taxpayer's first-class mail, either in search of evidence of tax liability or of assets from which taxes might be collected. Federal statutes forbid, and prescribe criminal penalties for, the opening of first-class letters or parcels by anyone save an employee in the dead letter office or a person holding a search warrant. But it is a nuisance to obtain a search warrant: the application must make some showing of probable cause for the search, the warrant may be annoyingly specific as to the items to be seized, and there have even been instances when warrants have been refused. Hence, the IRS hit upon a more "efficient" scheme.

Provisions of the Internal Revenue Code authorize the IRS to make its own administrative levy on "property of" a taxpayer "for the payment of" taxes. These provisions also direct that "as soon as practicable after the seizure of the property" it shall be sold. In any event, they reach only to property of the taxpayer, and postal regulations provide that the sender of mail can reclaim it at any time before it is delivered to the addressee. Nonetheless, it was the practice of the IRS to serve levies on the Post Office, which would thereupon surrender mail addressed to taxpayers—not for the purpose of sale but to be opened and examined by the IRS. When this practice was exposed, Congress promptly amended the Internal Revenue Code to exempt all undelivered mail from the IRS levy.

It might be supposed that information which the government compels the citizen to supply in his tax returns would be held in confidence and used only for the purpose for which it is supplied. In fact, the confidentiality of tax returns is preserved by a statute which has all the containing qualities of a sieve. Federal tax returns are fully available to state tax officials and *The Wall Street Journal* has reported (April 21, 1970) that at least 45 million of some 75 million returns filed in 1970 were to be put on computer tapes and mailed to at least thirty states.

Tax returns are available also to any select committee of either House of Congress "authorized to investigate returns," and to anyone authorized by executive order. Between 1957 and 1970 fifty-three such orders were issued. These orders are not confined to the returns of named persons, but authorize inspections of all returns for designated periods of years. Two of the chief beneficiaries of these Presidential dispensations have been com-

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mittees that have nothing to do with internal revenue matters—the House Un-American Activities Committee (which changed its name to the House Internal Security Committee two years ago) and its counterpart in the Senate, the Senate Subcommittee on Internal Security.

Moreover, by relying on these executive orders, I am substantially understating the extent to which tax returns, or their contents, are disseminated. The discovery about a year ago that Presidential aide Clark Mollenhoff was examining tax returns without an executive order—or at least without a published order—led to further disclosures that similar practices had been followed in the Kennedy administration. It was reported also that IRS employees had not infrequently leaked the contents of returns, and that in one instance a friendly revenue agent had obliged a federal prosecutor by screening the tax returns of 150 prospective jurors in a tax case. No one could recall, however, that any IRS employee had ever been prosecuted under a statute imposing criminal penalties for such activities.

The Army. The Army, of course, has personal files on those who are, or have been, in its service. But in January of last year, a former captain of Army intelligence revealed that the Army since 1965 had been collecting information on civilians and maintaining files on them in its computerized data bank at Fort Holabird in Baltimore—ostensibly to enable it to anticipate civil disturbances. Then followed a series of somewhat contradictory reports. Rep. Cornelius Gallagher, chairman of the House Subcommittee on Invasion of Privacy, announced that the Army had assured him that its surveillance of civilians would cease. Somewhat later, Secretary of Defense Melvin Laird announced that the surveillance operation had been transferred to civilian control in the Department of Defense.

Later hearings before a Senate subcommittee revealed details of the Army's 1968 "Civil Disturbance Information Plan." Defense Department spokesmen testified that the Department had since 1968 maintained an index of 25 million names (now being computerized), about 80 per cent of which were keyed to dossiers; and that since 1968 the compilation had included civilians who had taken part in civil rights or anti-war activities, and who were thus regarded as at least potential civil disturbance risks.

Also included were prominent persons friendly with such suspects, among them Sen. Adlai E. Stevenson III, Rep. Abner Mikva and former Illinois Gov. Otto Kerner. The Army's share of the dossiers—about 8 million—were said to be accessible to only 688 authorized officials. Asst. Atty. Gen. William Rehnquist testified that surveillance of civilians had now been transferred from Defense to Justice, conceded that there had been abuses due to "excessive zeal," opposed any legislative limitations on such surveillance, and urged the Congress to rely upon "self-discipline" on the part of the executive branch.

Before the Congressional hearings started, the ACLU had filed two actions to enjoin the Army's civilian surveillance programs as a violation of the First and Fourth Amendments and of a constitutionally protected right of privacy. In each instance the complaint was dismissed; in both cases appeals were taken and the Court of Appeals in the District of Columbia has in one case reversed the dismissal and ordered the Army to trial.

House Internal Security Committee. Not all the dossier compilers of the federal government are in the executive branch. Since 1938 the former House Un-American Activities Committee has been compiling dossiers on persons and organizations it deems insufficiently anti-Communist. (In a more sporadic fashion, the Senate Internal Security Subcommittee does the same thing.) The House committee does not reveal the number of its dossiers, but by 1949 they occupied thirty file cabinets, and by 1955 the committee was converting them to microfilm.

The Supreme Court has held unconstitutional a state statute requiring registration of members of organizations cited by the committee, because the committee's procedures do not include minimum safeguards to "insure the rationality" of its compilations. Those compilations are, nonetheless, widely used both privately and officially.

Anyone can obtain a copy of a committee dossier by requesting it through a member of Congress. During the past year the committee responded to 1,057 such requests, and its files were also examined 1,348 times by twenty-five executive departments and agencies of the federal government. In 1968 Rep. Don Edwards wrote to several executive agencies and departments and asked them to what extent they searched committee files and why. All responded that they searched the files in connection with the federal loyalty-security program and estimated the frequency of their searches as follows:

Housing and Urban Development—"about once a month."

Health, Education and Welfare—"several times each week."

Defense Department—"approximately 120 times a week."

Civil Service Commission—"approximately 288,000 times in fiscal 1967."

Rep. Edward Koch has recently introduced a bill, applicable only to the House Internal Security Committee, which would require the committee to notify each individual on whom it keeps a file that the dossier exists, to allow the individual to inspect and supplement the file (but not learn the source of information in it), and to forbid any disclosure of the file to persons outside the committee and its staff without the consent of the subject —but with a blanket exception from all these provisions for files that two-thirds of the committee decide should "be kept secret in the interest of national security."

During the summer of 1970 the committee sent a questionnaire to 179 colleges and universities, asking them to list all campus speakers for the previous two-year period, together with the honoraria paid. After checking the replies received against its dossiers, the committee produced and released to the press a list of sixty-five "radical" campus speakers. Some of those so named protested and the list was pared to fifty-seven.

The ACLU brought an action to enjoin official publication and distribution of the list. Judge Gesell decided that he could not direct an injunction to committee members because of the "speech or debate" clause of the Constitu-

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tion, but did enjoin the Public Printer from printing or distributing the list, which he found to have no legitimate legislative purpose but to be designed solely to agitate college officials, alumni and parents in an effort to inhibit free speech on the campuses. Although the government has appealed the decision, the committee persuaded the House to adopt a resolution directing the Public Printer to publish the list and he has done so.

From time to time, the committee also publishes a cumulative index of the names of all individuals, organizations and publications mentioned in any of its own publications. The index for the period 1938-54 includes the names of some 38,000 individuals. A supplement published last year lists about 25,000 names mentioned in committee reports, hearings or "consultations." Since I am in the supplement, though not in the original volume, I used the index to discover what had brought me into such distinguished company. I discovered that in the 1966 hearings a witness had cited an article of mine which described as unconstitutional a "Criminal Conspiracies Control Act" which the committee was sponsoring. [See "Clear and Present Danger" by Vern Countryman, *The Nation*, July 4, 1966.] But that was not the extent of my misdeeds. During the 1967 hearings of the committee, the Washington representative of the National Committee to Abolish HUAC, of which I am also an official, distributed to the press a statement I had written contending that proposed amendments to the Internal Security Act, which were enacted in 1968, were also unconstitutional. Of course I have no ground for complaint at being included in a list which also names, among others, all known and suspected members of the Communist Party and the Ku Klux Klan. The committee protects my good name by saying, in fine print in the front of the index:

> The fact that a name appears in this index simply indicates that said individual, publication or organization has been mentioned in a hearing, report, or consultation. It is not per se an indication of a record of subversive activities. A careful check of references in the hearing, report, or consultation will determine the circumstances under which such individual, publication or organization is named.

Anyone with access to the committee's hearings and reports, and time to devote to them, can determine the basis for most of the citations. The committee does not explain, however, how one is to check out its "consultations." Presumably one asks his Congressman to obtain a copy of the committee's dossier on the person in question.

The Census Bureau. Although the Constitution directs a decennial "enumeration" of the population for the purposes of apportioning Representatives among the states, the Census Bureau, an arm of the Department of Commerce, is now directed by statute to collect and publish information not only on the population but also on industry, business, agriculture and governments, on crime and on defective, dependent and delinquent classes. The population census, far from being a mere "enumeration," covers matters of sex, race and national origin, place of birth, marital status, family size, nature of household, quality of housing, geographical location and mobility. In addition to the information which it collects itself, the

Census Bureau also obtains information from such other agencies as the Internal Revenue Service and the Social Security Administration. Like the benevolent private compilers, the Census Bureau is not interested in individuals but in groups. But, as in the case of the private compilers, its data cannot be kept up to date or programmed for new uses unless a key to the identity of each individual is preserved, and such a key is preserved.

Everyone over 18 years of age is required by law to respond to the bureau's inquiries. The bureau is authorized to furnish state governments, courts and individuals with "data for genealogical and other proper purposes," but the information so furnished is not to be "used to the detriment of" the subject. Otherwise, the bureau is forbidden to use the information supplied by the citizens for "other than statistical purposes," or to permit anyone outside the Department of Commerce to "examine individual reports." Criminal penalties are prescribed for unauthorized disclosure.

The bureau claims that there has never been a known violation of these restrictions on use and that it does not supply individual information to other federal agencies, but the Federal Trade Commission found a loophole. Pursuant to an investigation of possible violation of antitrust laws, it issued an administrative subpoena for a corporation's file copy of its census returns. The Supreme Court, in an opinion equally applicable to all census returns, and probably to tax returns as well, held that the subpoena should be judicially enforced, although the census report form was marked "Confidential" and stated that it could not "be used for purposes of taxation, investigation or regulation." Both the legend on the forms and the statutory restrictions on disclosure were held to run only against the Census Bureau and not to impose limitations on the power of other governmental agencies to compel the subject to disclose its file copies. Congress promptly passed an amendment forbidding any governmental agency from obtaining copies of census returns retained by the subject.

This survey of official dossier compilers is by no means complete, even at the federal level. For instance,

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The Associated Press reported last year that the Civil Service Commission has files on 10 million persons who have sought federal jobs since 1939, and additional files on 1.5 million suspected of "subversive activities," who presumably have lost or will never get federal jobs. The Secret Service has computerized 100,000 names and accumulated 50,000 dossiers. Personal files are kept on virtually all of the labor force by the Social Security Administration, and the Passport Office keeps a computerized file of more than 243,000 citizens whose applications for passports are brought to the attention of law-enforcement agencies. A 1966 survey of all federal executive departments and agencies revealed that they had 3.1 billion personal files, including 264.6 million police records, 342 million medical histories, 279.6 million psychiatric records, and 187.8 million "security or other investigative reports."

Congressman Koch and Sen. Birch Bayh have introduced bills to enact a Citizens' Privacy Act. Applicable to all federal agencies and departments subject to the Administrative Procedure Act (but not to Congressional committees), the Act would require the same notice to the subject, opportunity for him to supplement the file, and petition against disclosure without his consent that Congressman Koch's bill would impose on the House Internal Security Committee—but with exceptions for files "compiled for law-enforcement purposes" so long as "reasonably necessary to commence prosecution or other action," and for files "specifically required by executive order to be kept secret in the interest of the national security."

Taking a cue from the federal government, the states are also compiling mountains of data. The New York State Identification and Intelligence System, established in 1965, has a computerized central data bank serving 3,600 law-enforcement agencies in the state. The Oklahoma Office of Inter-Agency Coordination, established in 1969 with federal Law Enforcement Assistance funds, is now facing an ACLU lawsuit seeking the dismantling of its files of 6,000 dossiers. The Massachusetts Civil Liberties Union is preparing a similar suit against the State Police's Subversive Activities Division, whose continued operation is also being challenged in the state legislature.

In a New Orleans suit now before the United States Court of Appeals for the Fifth Circuit, the commander of the city's intelligence division has testified that his men attend and take photographs at all public events where "controversial" views are likely to be expressed. In New Jersey, the attorney general sent a memorandum to local law-enforcement officials asking them to report to the State Police Central Security Unit the names of all persons involved in "incidents" such as "civil disturbance, riot, rally, protest, demonstration, march, confrontation, etc.," including information on spouses, draft status, affiliations, education and credit status. In a class action for a declaratory judgment that such a program violated the First Amendment, the trial court gave summary judgment for the plaintiffs and ordered the attorney general to produce and destroy all dossiers except those that "will be used to charge persons with specifically defined criminal conduct." On appeal, the decision was reversed. The summary judgment was held to be improper because plaintiff's fears that the dossiers would be improperly used was considered "fanciful"—the police, it was suggested, may have intended to use the dossiers only to call upon those listed to help dissuade others from resorting to violence! An amended complaint has been filed in this action.

A National Data Bank

As I mentioned earlier, a proposal, originating with certain academics and encouraged by the Bureau of the Budget, was made several years ago to establish a Federal Data Center, not for the purpose of compiling personal dossiers but solely to compile statistical information on groups. After a series of Congressional hearings in which it was conceded that some key to the identity of those in the group must be maintained if the group compilations were to be kept up to date and adaptable to new uses, a commitment was obtained from the Bureau of the Budget that, before such a central data bank was established, the problems of threat to privacy would be evaluated by a panel including constitutional lawyers, computer experts, suppliers and users of statistical information and representatives of Congress, and that specific legislative authorization would be sought on any recommendations of the panel. There the matter rests.

It would be incautious to conclude from that, however, that a National Data Bank is an issue for another day. The effect of computers on the vast numbers of personal dossiers already collected by private and official compilers is to give us a National Data Bank now, albeit one not as "efficient," and one more vulnerable to unauthorized use, than a single storehouse of information would be.

Many private compilations are already computerized, more are in process of transfer to computers, and the dossiers of many noncomputerized compilers have been fed into the computers of other private or official compilers. The federal government acquired its first all-electronic computer during World War II for use by the Army Ordnance Corps. By 1964 at least 2,000 computers were in federal use, excluding "equipment which is used in military operational and certain classified activities within the Department of Defense."

The computer can store infinite bits of information and can retrieve them at the rate of a few nanoseconds (billionths of a second) per bit. Computers can be connected by interfaces and can be tapped, not only by theft of printouts or by tampering with wires but by laser beams and other nonmechanical intrusions. Access codes can and are broken, after which the intruder can "display and manipulate the data stored within the system." No completely effective security system against such intrusions has been or probably ever will be devised.

The intruder in quest of data on a particular subject will, of course, have to locate his quarry in the bank, but in many cases that may not be difficult. Enough knowledge in advance about the subject to pose a few pertinent questions to the raided computer will quickly identify him. In many other cases, an even easier technique may be available. Social Security numbers are entered on federal and many state tax returns. In several states that number is also used on drivers' licenses. One and a half billion of

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those 3.1 billion federal personal files also contain the subjects' Social Security numbers.

Computers not engaged in compiling or stealing dossiers can also make their contributions to the data bank. The airlines' computerized reservation service will reveal where you flew, whether you rented an automobile for use after landing and, perhaps, where you made hotel reservations. The hotels' computerized reservation service will provide the latter information if the airlines' service does not, and will say also whether you shared the accommodation with one claiming to be your spouse. Your bank's computerized check-processing system will reveal details of many of your expenditures and, as we move into the checkless, cashless society, will ultimately reveal the details of your every expenditure.

Measured against this monstrous technological capacity to search out most of the details of our lives, the present state of the law—and most of the proposals for new law—seem to me inadequate to achieve their professed objectives. And those goals, in time, promise inadequate protection, even if they could be achieved.

Insuring the Accuracy of Dossiers. Some concern about the accuracy of the proliferating dossiers arises from what computer men call the GIGO principle—Garbage In, Garbage Out. In fact, the computerization of personal dossiers may provide the first literal application of that principle, since the investigators of private individuals have been known to comb through the subjects' garbage.

The main purpose of the Fair Credit Reporting Act, and of the proposals for legislative restrictions on some federal compilers, is to insure that the information in all our dossiers will be accurate. The chief mechanism provided to achieve this end is notification to the subject, who then has an opportunity to correct erroneous entries; the Act also requires the compiler to discard out-of-date entries on his own initiative. These measures almost surely will not achieve their objectives for at least two reasons:

(*1*) Many subjects will never receive notice that their dossiers exist. The only sanctions in the Fair Credit Reporting Act are compensatory damages for negligent failure to give notice and punitive damages for willful failure to give notice. The Act even purports to prevent the states from expanding their tort law to award damages for erroneous reports against compilers who are not guilty of malice or willful intent to injure. Since subjects who do not receive notices will never know that they may have a cause of action, compilers have considerable incentive to be sparing with notices.

The proposed legislation applicable to executive departments and agencies not excepted in "law-enforcement" and "national security" cases seems to provide even less incentive to give notice. The legislation contains no sanctions of its own, and it is doubtful that the nebulous provisions of the Federal Tort Claims Act can be read to incorporate the compensatory damage provisions of the Fair Credit Reporting Act. Beyond this, there appears to be only the possibility of an action, possibly a class action, to compel compliance, and that will also be of little value to one who does not learn that he is the subject of a dossier. The proposed legislation applicable only to the House Internal Security Committee, which also contains no sanctions of its own, seems even more toothless. Since the Federal Tort Claims Act extends only to executive departments and agencies, an action to compel compliance may not reach to members of Congress, and apparently will not reach to employees of the committee if the committee is careful not to delegate to them the duty of giving notice.

(*2*) The credit reporting agencies managed to put over on Congress the monstrous proposition that they should remain free to collect and disseminate erroneous dossiers —subject only to liability for malice or willful intent to injure—and that the burden should fall upon their subjects to come in and correct the errors. The pending bills that are applicable to some federal compilers proceed on the same assumption. But many subjects, even if they receive notice, may conclude that life is too short, or their resources too limited, to make the effort toward correction. Particularly may they reach this conclusion when they discover that they cannot learn the sources of adverse entries (except for credit bureau reports), nor compel deletion of such entries, but must content themselves with entering their version of matters in the file—and that under the Fair Credit Reporting Act they cannot actually see the files but must be content with the compiler's disclosure of the "nature and substance" of the information therein.

Restricting Access to Dossiers. The Fair Credit Reporting Act imposes two restrictions on access to the dossiers of commercial compilers without consent of the subject. First, the compiler is to furnish information only to persons and governmental agencies who, the compiler "has reason to believe," have a "legitimate business need" for the information or, in the case of a government agency, wish to determine the subject's eligibility for a license or other benefit. Any compiler who is negligent in establishing his "reason to believe" is liable for compensatory damages, and any compiler who willfully acts without such reason is liable for punitive damages—if the subject learns what was done and is able to persuade a court that the need was not "legitimate" and that the compiler acted negligently or willfully. These remedies, I would suppose, will be invoked almost as rarely as the criminal penalties prescribed for officers or employees of a compiler who knowingly and willfully disclose information to one "not authorized" to receive it. The standard for authorized access—"legitimate business need"—is probably too vague to satisfy due process requirements for a criminal statute and is certainly too vague to hold out much promise for an effective civil remedy.

Second, the Fair Credit Reporting Act forbids disclos-

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ure, except in response to court order, of more than identifying information—name, present and former addresses, and present or former places of employment—to any government agency not engaged in determining eligibility for a license or other benefit or which does not have a "legitimate business need." No substantive limit at all is placed upon governmental agencies empowered to issue statutory subpoenas enforceable by court order, that can convince the court that the information is relevant to an inquiry they are authorized to make; the Act does impose upon them the inconvenience of obtaining the court order.

The FBI has no subpoena power. It is thus left with three alternatives in cases where it does not wish to obtain a search warrant or to proceed on the assumption that the Fourth Amendment does not apply to the federal executive: (*1*) it can stop using the files of the commercial compilers; (*2*) its agents can obtain access to the files by means of false pretenses and risk prosecution by the Department of Justice; or (*3*) without false pretenses, its agents can persuade officers or employees of the commercial compilers to risk prosecution by the Department of Justice by knowingly and willfully making an unauthorized disclosure. The record of Department of Justice prosecutions for illegal wire taps under the Communications Act of 1934 strongly suggests that the FBI will not feel confined to the first alternative.

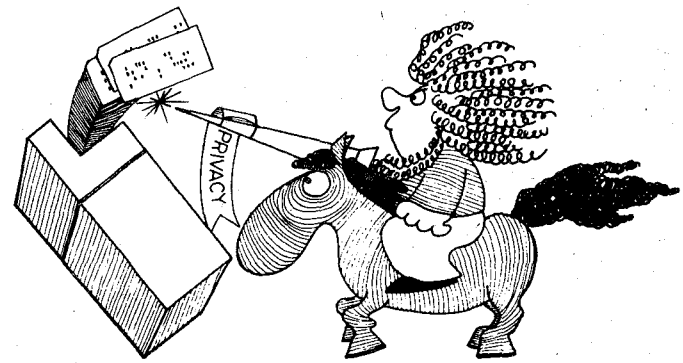
Some concerned computer men have suggested that privacy may be adequately protected if disclosure of personal data is limited to instances when the subject consents to such disclosure. The Fair Credit Reporting Act also authorizes disclosure of dossiers to anyone, pursuant to "the written instructions of" the subject. But obviously, when the subject is seeking employment, when he is seeking insurance, or even when he is seeking credit, his consent will be far from voluntary. Indeed, one of the compilers' arguments against compelling them to give the subject a copy of his dossier was that someone else might, by economic coercion, "invade his privacy" by compelling him to produce it.

The proposed legislation applicable to some federal compilers would—with generous exceptions for "national security" and "law-enforcement" files—forbid any disclosure of information without the "permission" of the subject. Here again, any consent given by a subject seeking federal employment will often not be voluntary. In any event, the limited sanctions available under these proposals are not likely to deter improper disclosure, or to provide effective relief to one injured by such disclosure.

Limiting the Contents of Dossiers. It has been suggested that limitations be placed upon the content of personal dossiers. Some of the proponents of a formal National Data Center, for instance, suggested that its files should include only "statistical" data, not personalized data of the sort found in FBI, IRS, military, civil service and medical records. But they could devise no standard precise enough to permit effective control. Moreover, they apparently contemplated the continued compilation of the various types of more personal dossiers that they would not include in the National Data Center, and it is the existence of such dossiers and the ubiquity of the computer which have created the present, informal, National Data Center.

But What About Privacy?

Even if all dossiers were absolutely accurate, or if remedies for inaccuracy were absolutely adequate, the question of the right to privacy would remain. By a "right to privacy" I do not confine myself to the right to protection against unwanted publicity and palpable intrusion into private affairs which finds some limited protection by common law or by statute in some states. Nor do I confine myself to recently emerging constitutional concepts which thus far have forged slightly beyond the Fourth Amendment to permit married persons to receive birth control information, and anyone to contemplate in the sanctity of his home material which might otherwise be forbidden as obscene, but which do not protect against erroneous but nonmalicious publicity about public officials, public employees embroiled in public issues, and private citizens who have been injected into the news by events beyond their control.



I refer rather to a concept of privacy which Justice Brandeis described as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." Justice Douglas has characterized it as the freedom of the individual "to select for himself the time and circumstances when he will share his secrets with others and decide the extent of that sharing." Such a concept of privacy is offended by the gross compilation of details about a person's private affairs, however accurately and delicately the compilation is effected, and the dissemination of those details to others, whether they be private or public users of the information and regardless of their number.

I do not regard it as conceivable that courts or state legislatures, in the development of private law remedies, or that courts in the development of constitutional doctrine, will establish such a concept of privacy in time to meet the dangers of the computerized dossier. Only the Congress seems capable of acting with the speed required. And, in order for it to act effectively, it must first comprehend the concept of privacy which its efforts must be designed to insure. It must also rid itself of three misconceptions which it shares with many outside the Congress:

(*1*) That whatever technology can produce should be used; (*2*) that anyone who can show that information is useful, or comforting, to him in the conduct of private or public affairs has shown a "legitimate need" for its use; (*3*) that whatever is efficient is desirable.

If a meaningful concept of privacy were adopted and these three misconceptions were discarded, Congress

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should then proceed on the assumption that, as long as dossiers exist on the present scale, they will be used in disregard of whatever restrictions may be imposed. Law-enforcement officials "in an excess of zeal" will disregard those restrictions and, in an excess of tolerance, will not invoke criminal sanctions against themselves or others who similarly disregard them. And with the use of dossiers at its present magnitude, no privately enforceable remedies will suffice to check unauthorized use.

The only hope for substantial protection of privacy against the computerized dossiers, therefore, is that they not exist—at least that they not exist on the present scale. And if the "legitimate need" for dossiers were appraised as an actual need for a vital public purpose, rather than as a convenience or a comfort for any acceptable purpose, the great bulk of existing dossiers could be eliminated and the growth of dossiers in the future drastically curtailed. Careful study of the contents of various compilations, and careful consideration of the justification therefor, would be required before lines could be drawn, but it seems apparent that a rigorous application of the test of actual need for a vital public purpose would drastically clear the files.

To cite but a few examples: No such need justifies the retention in FBI files of all information amassed by it and by cooperating state police authorities on all persons investigated in connection with a particular crime after the case has been closed. Similarly, there is no such need to retain in both FBI and Civil Service Commission files the collection of gossip, rumor and hearsay—or even of hard facts—on an applicant for federal employment after his application has been denied. The only "need" for preserving keys to personal identity in the Census Bureau's population statistics is that those keys facilitate keeping the statistics up to date and adapting them to new uses during the ten-year period between censuses. How vital is that need, and could it not perhaps be met instead by taking a population census at more frequent intervals?

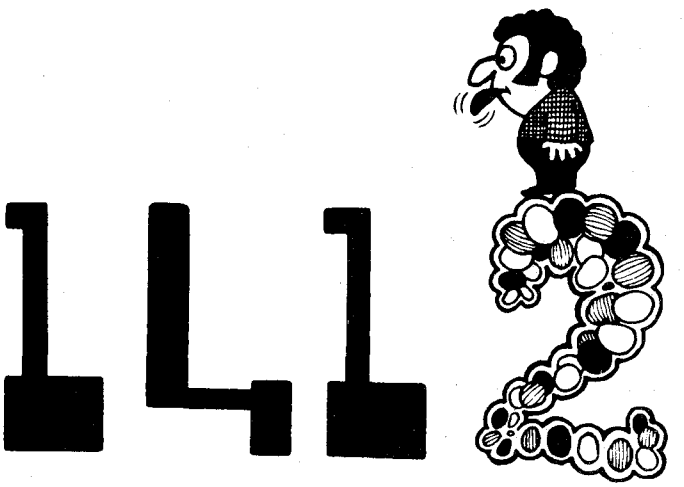
There is no such need at all for the highly untrustworthy files of the House Internal Security Committee. There is even room to question the need for those permanent dossiers which constitute the lifeblood of the credit bureaus. As I have previously indicated, they are as likely to induce as to preclude an unwise credit extension. Yet the business volume of the users of those dossiers is such that their losses are almost infinitesimal. I have asked many bankers and finance company representatives about their loss ratios on consumer receivables and have yet to be given a figure higher than .5 per cent. In other instances the consumer finance companies have claimed a loss ratio of 1.5 per cent, and the bankers have claimed 2 per cent. But the latest word I have seen, from a spokesman for the American Bankers Association, is that on consumer transactions "in commercial banks the loss ratio is less than half a per cent; it is perhaps now getting close to a quarter of 1 per cent." If the customers of the credit bureaus can do that well on the sort of information they now receive, how much worse would they do if left to their own devices? The oft-stated assumption that losses would greatly increase, with a consequent increase in the cost of consumer credit and a throttling of the economy based on that credit, has not been sufficiently challenged.

If a tough-minded inquiry were directed to the actual need for most of the existing compilations, we might expect to hear even more from the compilers than we have in the past about "efficiency." It is more efficient to preserve the dossiers for future possible use than to require a new investigation of the subject whenever information about him becomes necessary, or helpful, or comforting. Certainly it is more efficient. It is more efficient to preserve in a place of convenient access every police investigation of anyone ever made, no matter how unwarranted, against the possibility that such an investigation may again be made in the future. It is efficient to have the Selective Service System provide the FBI with fingerprints and other information on all persons it processes, against the possibility that a small percentage of them may at some future date be involved in an infraction of the law. It would be more efficient to extend the Alien Registration Act to citizens.

But we have not, in this country, been content in the past to let efficiency be the determining factor when individual liberty was jeopardized thereby. We have decided against efficiency and in favor of constitutional bans on unlawful searches and seizures and self-incrimination, and for jury trials in criminal cases. In view of the massive threat to individual privacy posed by the present and growing body of computerized dossiers, efficiency will hardly serve to justify their preservation.

These are the assumptions on which, it seems to me, Congressional inquiry should proceed. If it were to proceed so, I am confident that it would conclude that most of our present National Data Bank must be wiped out. If the inquiry were to proceed on those assumptions it would also produce some meaningful restrictions on access to the dossiers which survive because they have some reasonable relation to a vital public purpose, and these restrictions would themselves justify the preservation and continuing use of such dossiers. If Congress were to proceed on those assumptions, finally, it would not place the policing of restrictions to access in the hands of those most likely to violate the restrictions.

We have not yet had an inquiry based on such assumptions, and the time for it is overdue. The computerized dossiers are multiplying by the day. We are only thirteen years from 1984. □



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BOOKS & THE ARTS

'That Enquiring Man, John Synge'

J. M. SYNGE AND HIS WORLD. *By Robin Skelton. Viking Press. 144 pp. $7.95.*

THE WRITINGS OF J. M. SYNGE. *By Robin Skelton. Bobbs-Merrill. 190 pp. $8.*

DAVID H. GREENE
Mr. Greene is head of the All-University Department of English at New York University, and co-author of J. M. Synge, 1871-1909 *(Macmillan).*

It is difficult to realize that John Millington Synge was once the *enfant terrible* of Irish letters, considered by many of his contemporaries a slanderer of Irish womanhood, a Parisian *flâneur* passing himself off as an interpreter of Irish life. His first play, *In The Shadow of the Glen*, caused a mild stir of disapproval when it was performed in Dublin in 1903. But when his masterpiece, the ebullient and sardonic comedy, *The Playboy of the Western World*, was performed at the Abbey Theatre in January of 1907, the audiences rioted because it seemed to them to be ridiculing the sense of national dignity which ardent nationalists believed to be an essential article of faith. The impact of this play which seemed to glorify father killing was so electric that word spread immediately to the colonies, and subsequent performances of the play in England and the United States were similarly greeted by demonstrations. In Liverpool, for example, resolutions were passed by delegates of the Irish National Foresters, Cumann na nGaedheal, the Gaelic Athletic Association, the United Irish League and the Gaelic League applauding "the gallant stand by the Irish men and Irish women of Dublin in their defense of the pure, honest, and noble characteristics of their people at home," and vowing to "prevent such production being given in the Liverpool district." When the Abbey Theatre Company made its first memorable American tour, four years later, performances of *The Playboy* were opposed in Boston, New Haven, New York. In Philadelphia opponents of the play succeeded in getting the company arrested for performing an indecent show. Neither Patrick Kavanagh nor Brendan Behan—two subsequent wild Irish boys—ever managed to create such an uproar.

But that was all sixty years ago, and most Irishmen today are happy to acknowledge Synge as one of their very own. Dublin revivals of *The Playboy*, both in the tourist season and out of it, are greeted with applause. Dublin's two universities, with the support of the Irish Government and the sponsorship of a committee of distinguished citizens including the Chief Justice of the Supreme Court, staged in April a splendid celebration of the centenary of John Synge's birth. Delegates from universities all over the world listened to five days of speechmaking and paper reading, viewed an interesting exhibit of Synge's manuscripts and saw revivals of his plays, including a first performance by the Abbey Theatre of *The Tinker's Wedding*, which Yeats refused to produce in his lifetime because it depicted a physical assault on a priest who refused to marry, without adequate fee, a tinker man and his woman. The celebration came to a close with the placing of a plaque by the Irish Tourist Board on the modest house in the Dublin suburbs where Synge was born in 1871. It would be remarkable for any Irish writer to have received such public, semi-official approval, much more one who had been attacked in the Dublin newspapers of sixty years ago as a man who slandered Ireland.

After the impact of *The Playboy* Synge's reputation was made. Although he died at the age of 37, only six years after the acceptance of his first play, he had nevertheless managed to write two masterpieces—*The Playboy* and *Riders to the Sea.* But during his lifetime the Synges, one of Ireland's historic Ascendancy families, had disapproved of his association with nationalists and his theatrical career, and after his death blocked the access of student, critic or would-be biographer to Synge's personal papers and manuscripts. Thus Maurice Bourgeois's *John Millington Synge and the Irish Theatre* (London, 1913), the first full-length treatment of Synge and his work, was written without the cooperation of Synge's immediate family. Eventually, after the death of one of Synge's heirs and the commitment to a mental asylum of the other, a nephew, Edward M. Stephens, began the job of assembling the facts and writing an account of Synge's life. When Stephens died in 1955 I was asked by his widow to take over his materials and unfinished manuscript and write the authorized biography which was published in 1959. In 1962 Oxford University Press published the first volume of a now completed four-volume, definitive edition of Synge's complete works, an impressive job of editing and a monument which Synge's contemporaries, including even Yeats, would have envied him.

J. M. Synge and His World and *The Writings of J. M. Synge* were written by Prof. Robin Skelton, of the University of Victoria, who is the general editor of the Oxford edition of Synge. The first is in a series of photographically illustrated biographies of famous writers directed to the general reader, and is based upon the authorized biography. The photographs which dominate the text are of Synge, his relatives and friends, the houses he lived in, the people and places he knew. Professor Skelton must have been struggling with the paucity of relevant photographs when he reproduced such items as Fraülein von Eicken's calling card, Synge's reader's permits for the Trinity College Library and the Bibliothèque Nationale, and a receipt from his violin teacher. But for the most part the photographs add a dimension to the biography which is welcome.

The second volume is a critical study of Synge's work, and in it Skelton demonstrates that he does not lack imagination in advancing new interpretations of some of Synge's work. Since he is one of the few people who have had access to the Synge papers, he is frequently able to find support for some of his propositions in Synge's unpublished manuscripts, particularly the preliminary, discarded drafts of the plays. Occasionally this creates the difficulty that the interpretation he is developing can be supported by little or nothing in the final text of the play, and the reader is impelled to conclude either that Professor Skelton is attributing to Synge an intention he never had or an intention he abandoned before he shaped his play into its final form. An example of this may be found in Skelton's discussion of *Riders to the Sea*, that somber masterpiece which has been called the best one-act play in the English language. Many critics over the years have observed

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that Synge's stark and uncompromising tragedy about an Aran woman whose father, husband and sons have all been destroyed by the cruel sea is written in a kind of formal, though passionate, poetic prose which gives it a universal appeal, so that it resembles classic Greek tragedy. Skelton finds the play full of archetypal symbolism, particularly in Synge's symbolical use of the number nine. Thus, he points out, Michael is missing for nine days before his body is discovered. Maurya, the aged mother, reports that she has seen "two women, and three women, and four women coming in"—all adding up to nine. Similarly her one remaining son Bartley, who is shortly to follow his brother Michael, says, "You'll see me coming again in two days, or in three days, or maybe in four days if the wind is bad"—adding up to another nine. But this, it would appear, is the only evidence for such numerology which he can find in the play, even though he does a little text wrenching to find other evidence. For example, it seems that the number of men in Maurya's family who have been drowned is eight. Undaunted by the obvious fact that Synge could just as easily have made it nine, Skelton argues that the ninth death, so necessary to his theory, is the "implied" death of Maurya herself. But why *implied*? Is Maurya's death—which is never made implicit in the play—any more implied than anybody else's? And could it not just as easily be argued that if Synge had any such thing in mind he would in fact have made it six men so that the "implied" deaths of Maurya and her two daughters Nora and Cathleen—which would finish the family off altogether—would be nine? And would he not also have worked the number nine, or a multiple of it, into the speech where Nora identifies Michael's socks by counting the stitches? "It's the second one of the third pair I knitted, and I put up three score stitches, and I dropped four of them." It appears, however, that Skelton's theory about nine symbolism really originates in the earlier drafts of the play where he manages to discover additional uses of the number.

Similarly Skelton finds in the rejected manuscripts evidence which leads him to theorize about Synge's references to black sea birds as symbols of doom, and he quotes a passage from *The Aran Islands* as additional evidence. The fact that the symbolic birds make no appearance in the final text of the play does not deter him from pointing out "how intent Synge was upon imbuing his play with mythic and supernatural feeling." One might be pardoned for reasoning that if the black birds were indeed symbols of doom in the first place, which is a reasonable interpretation of them, Synge nevertheless dropped them, along with most of the mystical number nines, from the final text, and this would imply that he wished his audience to draw no such meaning from the play.

A more ambitious example of Skelton's creative interpretation may be seen in his reading of Synge's book *The Aran Islands*, a relatively straightforward, though highly individualized, account of four visits to the islands off the coast of Galway between 1898 and 1901. Synge was 27 and a complete failure as a writer when he responded to Yeats's advice and left his Paris garret to go to Aran and to live—as Yeats later reported their conversation—as if he were one of the people and to "express a life that has never found expression." The change of environment had a miraculous effect upon Synge's development as a writer, for it was on Aran that he discovered what his real talent was. The account of his life there, which was his first book, is thus a significant document to the student of Synge because it not only gives us the raw material out of which he fashioned his art but allows us a glimpse of the writer at work. *The Aran Islands* is considerably more than a description of what was a colorful, primitive community on the fringe of European civilization. But Skelton's attempt to demonstrate that it is a kind of spiritual biography or aesthetic manifesto is not very convincing. Because Yeats's account of his conversation with Synge about Aran tends to oversimplify the achievement of Synge's book by describing it as an attempt to explain the islanders to the outside world, Skelton feels it necessary to the advancement of his theory to discredit Yeats's testimony. "Yeats's accounts of his life and contacts are rarely to be accepted as unvarnished truth. Wisdom after the event was often permitted to color recollections. His advice to Synge to 'express a life that has never found expression,' therefore may reasonably be regarded as much as a comment upon what Synge did as an accurate memory of what he told Synge to do."

Allowing for the fact that Yeats's account of the conversation with Synge was written some years after the event and that he dated the event two years after it had actually happened—a mistake he carefully corrected later—one would have to assume that Yeats was not a liar and that he was as accurate as the next man in remembering conversations he had had with his friends. Furthermore Yeats insisted upon the accuracy of his account when he wrote Lady Gregory in 1911 asking her to "tell [Maurice] Bourgeois that I met Synge in Paris long before he had even been in Arran (*sic*). I met him in 1896, and our conversation about his going to Arran was published in the introduction to the first edition of *Well of the Saints* during Synge's lifetime"—when Synge could easily have denied it if it had been untrue.

Skelton, at any rate, will have it that Synge's purpose in writing about the islanders was something considerably different from what Yeats apparently believed it to be. Skelton is quite right in pointing out the considerable evidence in the book which reveals the fact that Synge was highly selective in what he wrote about and that his omissions raise questions. But he is not very convincing when he argues that *The Aran Islands* is essentially a subjective statement, a kind of spiritual biography and a counterpart of Yeats's *The Celtic Twilight*.

Skelton's theory is that *The Aran Islands* begins like a piece of music with an overture and then introduces various themes, the first of which is isolation, with Synge emphasizing the fact that the islands are lost in mist when he first sees them from the deck of the boat. The second theme is the simplicity of the islanders' lives. The third is desolation, allied to the constant awareness of death. The fourth is untidy confusion, of careless muddle, manifested in the account of broken panes in the public house and the pigs playing untended in the surf. Most important is the theme of cultural inheritance, manifested first in an islander's reference to the antiquarians Petrie and Wilde, who visited the islands, and the "Catholic theory of the faries" which the same islander expounds. Taken together these themes all add up to the fact that Synge is attempting to show that the universal and primitive nature of Aran culture has managed to survive into the modern world but is unfortunately mixed up with, and confused by, modern influences. Life on Aran is simple, spiritual, pre-Christian, whereas life on the mainland is materialistic. But Aran culture is already on its way to being swamped by influences from the mainland. Thus Skelton sees great significance in the "Ballad of the White Horse" recited by an islander in part four which, he says, brings this theme of disintegration to a climax. The ballad refers to people from a variety of cultures—Adam, Babylon, Nebuchadnezzar, Noah, Moses, Brian Boru, Judas Maccabaeus, Daniel O'Connell and James II. Skelton concludes that "the narrator's involvement in his

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own interpretations is such that the whole book becomes much less the account of a series of visits to strange islands than an account of an introspective myth-making which feeds upon any evidence that supports it. The myth itself only forms gradually, and is brought to completion by the outpourings of the three final ramshackle poems that combine wildness of imagination with half recollected learning and an intuitive feeling for heroic values which are now decayed and mutilated as the consequences of isolation."

This is an attractive and interesting interpretation, but neither Synge nor any of the islanders make any statement which encourages it. It is Skelton and not Synge who sees "the islands as a fallen paradise, where all the ancient knowledge, innocence and dignity remain, though sometimes in vestigial condition, and where awareness of a lost understanding of the powers of nature and supernature, gives the approach to death the more than usual intensity. The myths of the islanders are now garbled, but show in their fusion of Christian and pagan themes a half recollection of the all embracing truth which unifies all story. The myth which separates Aran from the mainland is a barrier between the world of commonplace materialist life and the last remaining outpost of the life of the spirit in Europe." But, as Skelton seems forced to concede elsewhere in his book, all peasant communities—certainly in Ireland—accept without question the blending of pagan superstition and Christian belief without feeling that they are more spiritual than more sophisticated communities. Nothing that Synge wrote about Aran, either published or unpublished, indicated that he had any conscious intention of shaping a "personal myth" in which Aran was a fallen paradise like those visionary islands in medieval Irish romances, which he had miraculously discovered hiding from the modern world behind the fogs of Galway Bay.

One more example of Skelton's eagerness to find hidden symbolical meanings is his acceptance of the strange theory that the hero of *The Playboy of the Western World* is a Christ figure, though Skelton sees him as more of a parody than a reflection of Christ. General support for this interpretation, he argues, is to be found in the excessive use of religious verbiage in the play—all those *God bless you's* and *God help me's*. Thus Christ's epiphany is parodied in the scene where the village girls, like the Magi, bring Christy presents and hail him with "Well, you're a marvel! Oh, God bless you. You're the lad surely!" The moaning stranger left to himself in the ditch suggests the Good Samaritan, although he later turns out to be Christy-Christ, which would suggest some confusion in the analogy. Pegeen's "betrayal" of Christy is "Judas-like" and Christy's "projected hanging," like Maurya's "implied death" in *Riders to the Sea*, "recalls the crucifixion." Finally Skelton seems to feel that the similarity of Christy Mahon's name and what he seems to think Jesus' was—Christ Messiah—clinches the analogy.

When Skelton is not advancing such silly theories he does have something interesting to say about Synge's work. Synge's first play, *When the Moon Has Set*, and the fragments of three verse plays which survive, Skelton relates to Synge's later work, which is for the most part so utterly different that one wonders if the same man wrote all. Skelton's criticism of Synge's poems is sound except for the fact that he claims too much for them—"Synge, as a poet succeeded in making for himself a persona which few poets have been able to imitate in the twentieth century"—and reiterates an observation he had made in 1962 that Synge's poetry resembles the Cavalier poets, Suckling, Lovelace and Carew, because it is casual, impromptu, done for fun—a suggestion which must strike most readers as absurd. What can the authors of "Ask me no more where love bestows" and "Why so pale and wan, fond lover" possibly have in common with the author of "Bring Kateen-beug and Maurya Jude/to dance in Beg-Innish" or "You've plucked a curlew, drawn a hen?"

Deirdre of the Sorrows is the most valuable chapter in the book. Skelton believes that this last play of Synge's, left unfinished because the dramatist had entered upon his final illness, is essentially a failure despite its moments of tragic grandeur, and is in fact greatly inferior to Yeats's play on the same subject. This is a judgment not everyone will agree with but I think Skelton is right, even though Synge's play was unfinished and the comparison is not quite fair. He is very convincing when he shows how the language of *Deirdre* differs from the language of Synge's other plays in that it depends more heavily upon Gaelic syntax, though less upon colloquial Anglo-Irish, and is written in a rhythmic prose which can be broken up into units or lines of four stressed syllables with much parallelism of word and phrase. This poetic language of *Deirdre*, Skelton argues, came directly out of Synge's experiments in translating Petrarch and other Italian and French poets into Anglo-Irish prose dialect. *Deirdre* was therefore an altogether new departure for Synge in more ways than one. Skelton may be exaggerating Synge's achievement in claiming that Synge thus created a new medium for poetic drama. It was obviously a new medium for Synge, and one which never received the finishing touches he obviously intended to give it. □

Those Longeurs in Japanese Films

BARBARA WOLF
Mrs. Wolf is a lecturer in Far Eastern Studies at Foothill College, California, author of a film script, and a regular reviewer of films for KPFA-FM in Berkeley.

A Japanese painting is full of empty space. But the person who looks at a Japanese painting is not meant to think that emptiness means nothingness. Rather, like the concept of zero, it represents a significant absence of something, something which belongs to the scene but has been sacrificed. The viewer must infer what it was before he can grasp why it was omitted. A Japanese painting is two-dimensional. However, the viewer is not supposed to think that the painter saw without depth. Rather, depth is assumed, although the artist concerns himself only with the line.

A Japanese poem consists of an image. It is painterly. However, the reader is presumed to understand that such an image is a metaphor, one which he himself is supposed to complete. In Basho's famous haiku, the one that simply says, "Ancient pond, frog jumps in, splash!" the ancient pond may be eternity, the frog's leap a single event, the poem as a whole a comment on the relationship between the two. A Western poet might well have gone on to speak, as T. S. Eliot does, about the "intersection of timelessness with time." A Japanese poet expects his reader to make, or better still not to have to make, that kind of explicit formulation for himself. A Western reader is expected to follow the poet to the end. A Japanese reader is expected to go on alone from the point where the poet lets him off, to find his own way.

A Japanese drama is full of moments of frozen action. The Noh play moves throughout at a glacial pace. At intense moments in Kabuki, the actors will assume stylized poses and hold them for several seconds, sometimes for as long

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as a full minute, allowing the audience plenty of time to observe and appreciate the composition of the staging and the skill of the actors in maintaining their strained and difficult postures. It also gives the audience time to appreciate much more. Each of these poses expresses in its dancelike, trancelike way the state of mind of the characters. The audience has time to read each face and body, to see menace in one, fear in another, compassion in a third, satisfaction in a fourth, then to take the broader view again, and consider the relationships among them all. When action resumes after such a pause, the audience is far better informed and feels more deeply what is at stake than would have been the case had the action continued unbroken. Depth of understanding and intensity of feeling are both enhanced by this theatrical stroke.

A Japanese novel is full of unexpected diversion and detail, full of observations, acts, descriptions which have little if any relevance to the promotion of the plot. The seminal work of Japanese fiction, the 11th-century *Tale of Genji,* concerns itself with the nuances rather than the crises of life. In one passage, a character may be thinking about his clothes, in the next about his passion for his father's wife, in the next about a change in the weather or a verse which has just come into his head. These thoughts are given approximately equal emphasis, the trivial in its turn occupying the character as thoroughly as what we would assume should be much more important. A Western character portrayed in this way, at least before the example of Joyce, would have been taken to be a light-minded and silly person. But such a character in a traditional Japanese novel was never judged in that fashion. The Japanese novelist does not make such hard and fast distinctions between the significant and the insignificant. He presents life as it is lived, step by step and minute by minute. A Western writer tries to confine his narrative to events which have continuous or recurrent influence. While he recognizes that a toothache can be as obsessively painful, so long as it lasts, as a mortal illness, he knows that the toothache will be forgotten once it is over, and therefore he will probably omit it so as not to mislead his reader. The Japanese writer may well make a point of including the toothache. The Western novelist will include a dream which comments immediately upon a character's dramatic situation and which he remembers upon waking up. A Japanese novelist may include a comparatively irrelevant dream which the character forgets upon awakening. He will include it because it may reveal a new facet of the character's personality, and because it is part of the character's experience, whether remembered or not. He may even include it because it is inexplicable, as a comment on the mysterious workings of the human mind. Some Western readers are understandably confused and annoyed by such inclusions. They complain that the Japanese novelist cannot distinguish between what is relevant and what is irrelevant, that Japanese plots are hard to follow. Such criticism makes sense enough given the premises of Western aesthetics. Judged by Japanese standards, however, it is meaningless. A Japanese reader is expected to participate far more actively in a novel than a Westerner would do, just as he is supposed to contribute much more to a painting, play or poem. He must distinguish for himself between the relevant and the irrelevant, noting how some themes and events recur, persist, and have lasting consequences, and others soon pass and are forgotten. Relying on this sort of discrimination on the part of his readers, the Japanese novelist feels free to include nuances, suggestions and complications which a Western novelist would feel bound to omit.

A Japanese film, too, demands more of the audience than a Western one. It often presents painterly images implying metaphors which the audience must work out for itself. There are sequences that do not further the plot but ask the audience to reconsider what has already happened. There are prolonged and even static pauses, which create the very opposite of suspense. Watching a Western film, an audience tends to be passive, waiting for the film to explain itself in due time. It is also impatient, because it is used to being always diverted and occupied. In Western films, the pace is the thing. Dialogue is made terse and epigrammatic, for the fewest words possible are thought to be the best. Thus, characters must express themselves with unnatural directness and truth, so that the plot can move on with the least possible interruption. A serious Japanese film cannot be watched in the same passive, eagerly impatient way. A serious Japanese film tends to pile up seeming irrelevancies, contradictions, and even false leads. Therefore, it may be far more difficult, and—I think—more lifelike than a Western film.

"Lifelike." But central to Western aesthetics is the idea that art and life must not be confused, that art is not a literal imitation of life but a selective one. Yet Japanese films are not unselective, nor are Japanese fiction and drama. What is in question here is the differing principle of selection. Since Aristotle's day, if not before, Western drama has discriminated in favor of the *plot*, the main line of action. In Japanese drama, selection is intended to enhance the intensity of the immediate *situation.* The question in the audience's mind is not, as in the West, "What will happen?" but "What is happening? What is happening now?" Not "What will the character decide or do?" but "What is he feeling and thinking while making this decision? Feeling and thinking now?" It is certainly not true, as I may seem to be implying, that such considerations are insignificant in Western drama. They are obviously important. They are even foremost in Shakespeare, who also often complicates and confuses his story line, halts his action to allow characters or audience to reflect, and in general tends to sacrifice structure to moment-to-moment intensity and complexity. Shakespeare, too, has sometimes been accused of being boring or inartistic. Such doubts about him arise from the fact that he is really not quite in the mainline of Western drama, even though he is accepted as one of the greatest of Western dramatists.

Japanese film technique is even more radical than Shakespeare in this regard, but a few examples should suffice to make its workings clear. In Kurosawa's *The Lower Depths,* based on Gorki's play, there is an extraordinary scene between an unemployed workman and his

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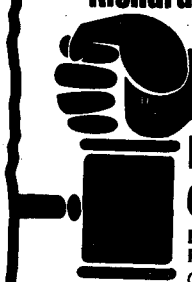

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Edited by Robert Paul Wolff

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SIMON AND SCHUSTER

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wife, who is dying. They live in a rotting flophouse, along with a score of other derelicts, beggars and invalids. Someone is kind enough to give the sick woman a stick of candy. The husband cannot take his greedy eyes from it. When the third person leaves and the wife dozes off, he snatches the candy and runs outdoors. He finds a patch of sunshine, squats down, and begins to gobble it up. As he eats, the man is framed in a long profile, shot at a sufficient distance to take in the whole of his body and to distinguish between the patch of sunlight and the shade that surrounds it. The camera waits patiently until the candy has been entirely devoured, and continues to watch a while as the man digests it. So far as the plot is concerned, this prolonged image could have been deleted entirely. It would have been quite enough to show the man snatch the candy and run. Yet the scene is one of the greatest in this great film. It portrays with stunning immediacy just how far this suffering man has come in being reduced to a beast. Instinctively, he runs off to feed in solitude, mindlessly drawn to the warmth of the sun. He feeds with utter concentration, entirely forgetful of his dying wife. His body is crouched defensively over his food as he tears at it, choking and forcing it down. Finished, yet still hungry, he sits staring at nothing. The image is worthy of Goya: the man's monkeylike pose and the nothingness all around.

In Kobayashi's *Kwaidan*, a blind young monk has the gift of raising the ghosts of a defeated feudal army when he chants the old epic lays about their tragic history. All the scenes between the singer and the spirits are brilliantly colored, powerfully dramatic, full of gorgeous special effects and thrilling music. Alternating with these sequences are others concerning the quiet, workaday world of his monastery. Two monks discuss a service they are arranging. Two lay brothers talk about the cakes one of them has brought back from a visit home. This one or that tries to get the blind boy to confide in him and tell where he goes at night. These scenes are pleasant, but they certainly lack the passion, the power, of the supernatural episodes. When a monastery passage ends and a ghostly one begins, the audience responds with excitement and anticipation. Indeed, what it feels is precisely the sense of release that the young monk experiences, and for which he is willing to sacrifice his sleep, his sanity—everything short of his life. The pleasant but colorless world of the monastery must be experienced by the audience too, if they are to understand and share the young monk's willingness to abandon it. As the singer's life is split in two, between enchantment ever more thrilling and daily life ever more dull, the film moves back and forth between these two realms of being, giving the audience plenty of leisure to experience and reflect upon the contrast between them.

Most Westerners have seen only the cut version of Kurosawa's *Seven Samurai*. In the version shown in Japan, there is an early sequence which is deleted in the export prints. Two peasants have come to town to hire unemployed samurai to protect their village from bandits. It is morning. One of the peasants is asleep by a large jar. He is wakened by the other, who asks him to prepare breakfast. He looks into the jar and at once begins to wail like a despairing child. The jar is empty; their rice has been stolen. The other, wild with rage, begins to beat him, knocking over the jar. Then suddenly, abruptly, he leaves off, turns away, and begins to weep bitterly. The first peasant shows no resentment over his beating, but patiently, painfully, begins to pick up the few scattered grains of rice left behind on the floor. A huge, prolonged close-up shows his shaking fingers trying to lay hold of the grains of rice. The scene does not matter much in the plot, for the peasants are able to beg some money, buy more rice, and get on with their plans.

It is obvious that the sequence was cut out for the sake of plot economy, as were many others, equally fine in themselves. It must have seemed to the distributors that there could be no use in a sequence showing in the first scene an event that is completely undone in the next, especially since the desperate situation of the peasants had already been very well established. Why waste five or six minutes on what amounts to just more of the same? But in a Japanese film, more, if it is more of the right thing, is never merely more of the same. The scene itself is very powerful, which is excuse enough for its inclusion. Although it adds only a little to our knowledge of the characters, that little is important, especially the glimpse of all the rage and resentment in the peasant who does the beating, and who is otherwise treated as a sympathetic character. The method may not be economical, but it has advantages which far outweigh economy. A Japanese painting is full of empty spaces. And the empty spaces in a Japanese film are also full, for those who know how to look. The evidence for this fullness is the fact that *Seven Samurai*, cut, is a great film, but *Seven Samurai*, uncut, is a great experience. □

A Vietnam Primer

ROOTS OF INVOLVEMENT: The U.S. in Asia 1784-1971. *By Marvin Kalb and Elie Abel. W. W. Norton. 336 pp. $8.95.*

RICHARD J. WALTON

Mr. Walton is the author of The Remnants of Power: The Tragic Last Years of Adlai Stevenson. *His* Cold War and Counterrevolution: The Foreign Policy of John F. Kennedy *will be published by the Viking Press in January.*

One can recommend this book on the trickle-down theory: the more books published on Vietnam, the greater the number of Americans who may come to recognize the folly of our intervention in Indochina. Particularly since the authors, each a familiar and respected figure in broadcast journalism, might attract readers that other writers cannot reach. This sounds like damning with faint praise, and to some extent it is. The ads for the book have cited political and journalistic notables, giving the impression that this is a most important contribution to the proliferating literature on Vietnam. In fact, it is a good, useful and readable addition, and it would have been significant if it had appeared two or three years ago. For a book of this kind to play such a role now, it has to offer more than just a general overview of the subject. At $8.95, moreover, this one is not likely to appeal to the great mass of readers; and for readers with a serious interest in Vietnam, it offers little that has not been better done elsewhere. It is to be hoped that the book will come out in paperback, so that at much lower cost and widely available, it can reach a broad audience among the television viewers who have come to trust Kalb and Abel as competent and reliable journalists.

For *Roots of Involvement* does have considerable value as a Vietnam primer. It makes the essential point that Vietnam is no aberration but a logical outgrowth of American foreign policy—not only that of recent decades but of decades long past, with origins in manifest destiny and the missionary impulse. It usefully emphasizes that every President since World War II bears a major responsibility for Vietnam. It has some fascinating inside stuff about the turmoil within the Johnson administration in the months before the President decided

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not to run again. But the problem with this book is that it's essentially a journalisic account of matters already analyzed and classified. It is well enough done, but it gives no new insights, no fresh interpretations; the tone might be called Latter-Day Establishment Dove. Nor is it a compilation so detailed, so unassailable that it merits respect for its solidity. Indeed, the book contains many small errors of fact and more serious errors of omission. There is, for instance, no discussion of the NLF's proposal for a neutralist solution in the first weeks of 1962 when John Kennedy was in the early stages of escalation. And the authors brush by U Thant's initiatives in getting Hanoi to agree to secret talks in 1964-65, initiatives that were spurned in an offhand way by the Johnson administration.

There are further problems, perhaps more attributable to the publisher than the authors. The book is mistitled. Although Kalb and Abel do discuss early American activity in Asia, some 50 pages covering the period from George Washington to Harry Truman scarcely fulfill the implied promise. There are no notes, an elementary requirement; there are plenty of quotations, many of them useful and interesting, but seldom any indication of where they first appeared. Many names are mentioned but not identified. And there is no bibliography, so that the book's usefulness to a reader with a newly aroused interest is limited.

Particularly disturbing is its antiseptic tone. One seldom has the feeling that Vietnam is a matter of life and death. It seems to interest the authors most as a Washington political drama at which they have had front-row seats. One would hardly ask such journalists to write a polemic, but surely a significant aspect of the Vietnam story is what the American involvement has meant to the people and even the soil of Indochina. Surely the death of hundreds of thousands is as important as the political eclipse of one man. Unaccountably, too, there is little or no discussion of Vietnam as a moral issue. In this regard, it is instructive that the names of neither Calley nor My Lai appear in the index. □

Reuben, Reuben

THE WORLD WITHOUT WOMEN. *By Virgilio Martini. Translated by Emile Capouya. Dial Press. 125 pp. $5.95.*

CATHARINE STIMPSON
Miss Stimpson teaches English at Barnard. Her latest publication is a contribution to Woman in Sexist Society *(Basic Books).*

An Italian writer and newspaper publisher, Virgilio Martini is virtually unknown in America, and *The World Without Women* is the first of his four books to be published here. He thought of his ingenious plot in 1933, in the third-class cabin of a ship in mid-Atlantic, and wrote the book—at once a satire, a didactic allegory, and a fantasy of the future—in Ecuador in 1935, and published it there a year later. When he tried to have it issued in Italy, it was suppressed as "offensive to public decency." Apparently its real offense was to public dictators, for one of Martini's characters, N'bambo, a barber turned tyrant, might be Mussolini in blackface.

To protect his family in Italy, Martini published *The World Without Women* under the pseudonym of "Letrusco." That person was supposedly the scion of a famous Ecuadorian family, had been raised in Italy, written the novel in Spanish, and then translated it himself into Italian.

During the Second World War Martini lived in Venezuela. To keep in touch with his native language he read and reread the only Italian book he had with him: *The World Without Women.* In 1954, when the book was finally published in Italy, in Martini's own literary review, it had been revised hundreds of times. The picture of the artist in exile, who turns to his work to strengthen his identity, is very appealing. It buttresses one's belief in the self-sufficiency of the writer and in the power of fiction.

The travail of *The World Without Women* had not yet ended. In 1955 and again in 1956 Martini had to stand trial, accused of having imposed a dirty book upon a virgin world. He was acquitted both times. He notes ironically in his preface to the sixth Italian edition that he had thought 50 or 60 million people had died during World War II to guarantee certain freedoms.

Martini writes as calmly as a chronicler, apparently beyond both bitterness and resignation. Even as he tells of the most extreme events imaginable, he remains clinical. His style is spare—most of his sentences declarative, except for nice parodies of various species of jargon. Part of this must be due to eighteen years of revision. He has written out rotund moral comment and rhetorical adornments.

Martini's fable begins on January 1, 2000. Humanity is caught in an end-of-the-world craze, a frenzy inherited from Christians and Jews, Romans and Greeks. Except for the fact that religions are corporations and governments are continental, 2000 is much like 1971 or 1936.

For a great principle of Martini's scheme is the impossibility of real change. As Northrop Frye said of other satirists in *Anatomy of Criticism,* his world is "full of anomalies, injustices, follies, and crimes, and yet it is permanent and undisplaceable." History is cyclical, human nature static, human institutions corrupt and repetitive. Martini is a radical conservative. He is no redneck in a business suit, no Agnew endorsing the *status quo,* but a cultivated polyglot who thinks the *status quo* will endure. Perhaps it is fair to call him a classicist.

In the year 2000, catastrophe does strike, and Martini shows neatly what a gap there is between imagining an apocalypse and actually getting one. What would we do if those rough beasts—nuclear war, race war, population explosion, ecology crisis—actually slouched around? Women between the ages of puberty and menopause begin to die horribly, gums, nose and anus bleeding. By the end of July, the disease, eventually called "falloppitis," has killed 15 million. The world collapses in an orgy of anarchic strife, "a slaughterhouse administered by madmen."

N'bambo takes over, falsely broadcasting that he has the cure for falloppitis. The global village submits to the global emperor. One of N'bambo's policemen has a servant who finally discovers the criminals who have been spreading the falloppitis microbe: the Misogynists Club, 687 homosexuals who have dedicated themselves to the "divine purpose of destroying women." The last men on earth, they figure, will have to make love only to other men—a final ecstasy, a final glorious spasm.

Despite the execution of the Misogynists, falloppitis marches on. N'bambo is deposed, in a burst of the mob fickleness Martini so despises. By 2015, there are no males younger than 16, no women younger than 60. Humanity, seemingly near its end, reverses the process of evolution: men become apes. Here Martini strikes a moral rock. If we are as greedy, as stupid, as outrageous as Martini makes us, why not welcome the apocalypse? But Martini must obey the law of momentum—a body in motion tends to stay in motion. History must lurch forward. Martini implies that we deserve it.

In 2029 a German scientist proclaims that the falloppitis microbe, lacking flesh to feed on, must be dead. A New York Jewish hypnotist, Samuel Levy, reveals

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that he put his daughter Rebecca into a cataleptic trance when she was 11, and that he will wake her up if the price is right. Woman lives.

Through the brute force of a Dutchman and the wiliness of the Jew, world government returns, a tyranny cloaked in the language of propriety and holiness. Rebecca becomes the star attraction in the National Treasures Building, a Babylonian brothel which makes Levy the richest man alive. Rebecca couples with 1,238,677 men. She bears nineteen children, among them Eve, born on December 25. She dies well, having revived mankind and matriarchy.

In the last chapter, Martini chronicles the Era of Eve, which is followed by a patriarchy, then a Republic, then a lot of warring states. The book's somber last paragraph is:

> Today even as yesterday, tomorrrow even as today; in this instant of Eternity representing all the millennia past and to come for mankind on this ball of mud; now as in the beginning, now and forever.

It is easy for a man with Martini's theory of history to be a prophet. Simply project the past into the future and add some surface details. The pattern of his narrative is comic. Yet the tale of malevolence in perpetuity creates a chill skepticism about the efficacy of human will. In a brilliant scene Martini has the remnants of the race struggling through the snow to Moscow to meet Levy and to see woman. They crawl by the statues of Russia's rulers: Lenin, Stalin, Nicholas. Each statue has lost its nose, a comic sign of the loss of integrity and power. But like Shelley in "Ozymandias," Martini writes of the futility, not just of kings but of willful people. His belief negates any faith in politics, which says one can change history, and in tragedy, which says one must mourn the waste of good will.

Martini's theory sacrifices individuals to the great cycles of history. All of his characters are blatant stereotypes—the Jew a crafty banker, the black a jungle boy, the homosexual a hostile queen, the woman a whore who loves her work. The Anti-Defamation League, NAACP, the Gay Activist Alliance, or the Image Committee of NOW could have a field day with *The World Without Women*. Yet to make a complaint on behalf of any one group is absurd. Martini really likes no one.

The absence of warmth is characteristic of satire, but Martini's refusal to permit any good feeling between his characters makes him seem nasty. Defining pornography as the attempt to "provoke sexual excitement in the reader," he finds it inconceivable "that there can be persons whose sexual systems are so sensitive that they can be inflamed by a reading of my book." Yet, he shares with the crassest of pornography merchants a vision of man as a lustful being whose talk of love is mere chitchat to dress up animal desire.

Martini's cosmic eye looks at the world floating in space. No celebrator of the race, he refuses to read Genesis in awe-struck tones on Christmas night from the dark side of the moon. He floats above the earth in the capsule of his imagination, too smart to forget that he is also stuck down below with precious few support systems.

Two final notes: the copy editing is lax; the translation is too often too cute. Why, for example, refer to "women's liberation"? Topical references seem especially out of place in a book that tells us not to take the topical seriously. □

MUSIC / David Hamilton

New York's recently moribund summer operatic activity was enlivened in early August when a touring troupe from the Center Opera Company of Minneapolis brought two productions to the Hunter College Assembly Hall: *The Mother of Us All*, the 1947 Gertrude Stein-Virgil Thomson collaboration based on the career and character of Susan B. Anthony, and *Faust Counter Faust*, described as a "music-theatre collage," by John Gessner and H. Wesley Balk.

Although the Stein-Thomson opera has not lacked for productions here and there over the years, it was clearly a novelty for most of the Hunter audience (including this reporter), and it emerged, even in this pared-down production, as something of a theatrical tour de force. To be sure, it currently benefits from considerable topicality, for the subject is, essentially, what is now known as Women's Liberation—and Stein's prescient libretto gives eloquent voice not only to the appropriate aspirations but also to the inevitable paradoxes: when women have the vote, they will become ever more like men. The delightfully nonlinear text, in which characters from all periods of Anthony's life (as well as a few from Stein's—for there is a strong author-heroine identification here) are mixed together simultaneously, also proves exceptionally compatible for operatic use: the built-in word repetitions function much as did the standard Italian method of sing-the-same-thing-over-and-over-again. Less gnomic than her earlier libretto (*Four Saints in Three Acts*), this text induces an equal delight in the possibilities of linguistic spareness, while conveying its arguments with surprising directness.

Thomson's score partakes of the same sophisticated simplicity, reveling in the harmonic and melodic idioms of 19th-century American hymns, dances and popular songs. Treading with great skill a treacherous tightrope between utter banality and parodizing "camp" treatment, Thomson imposes an apt variety of pacing and an always convincing speed of text delivery that mark the touch of theatrical mastery; if in detail the notes are not themselves very interesting, the relation of score to text and action is one of skillfully calculated deference. Nor does the composer overlook vocal possibilities; the heroine, in particular, has set pieces that call for impeccable technique and forceful projection—qualities provided in ample measure on this occasion by Judith Erickson. And even in a reduced orchestration for piano, trumpet, percussion and harmonium (the latter doubled by the singer in the role of John Quincy Adams!), the balance of elements was well sustained.

The exigencies of touring also led to some modifications of role assignment, with some doubling up and elimination of characters (their lines given to others); this was occasionally confusing, although only relatively so given the determined ellipticality of the libretto. The highly stylized—indeed, virtually choreographed—stage action, which ignored the (optional) scenario by Maurice Grosser provided in the score, matched well the rhythms of the music, drawing frequently and wittily on the *plastique* of turn-of-the-century American popular theatre, and it was played to perfection by the Center Opera's enormously flexible troupe.

Faust Counter Faust, which started with the Minneapolis troupe, also had a message, a more complex thesis relating the destructiveness of modern technology to the precedent set by Faust. The medium was primarily pastiche, using swatches of Goethe, Marlowe, Berlioz, Boito and Gounod to evoke earlier views of Faust, but the device soon lost focus, eventually leaning upon sections of Boito's opera for sheer sensuous appeal and then turning to parody with a not very relevant polyglot version of Gounod's garden scene. Gessner's own musical contributions hardly matched

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his borrowings in distinctiveness or invention; their stylistic orientation was rather Polish (serving at least to remind us that they hear a lot of Penderecki in Minneapolis, where Skrowaczewski is the resident conductor). As music, *Faust Counter Faust* is negligible; as theatre, despite serious intentions, it was only erratically entertaining—but at all events another splendid showcase for the company's dazzling physical virtuosity.

A more usual harbinger of August in New York is the so-called "Mostly Mozart Festival," which opened on August 2 with a concert primarily impressive for the work of the two soloists, since the orchestra (a band of the city's best free-lance players) had not yet shaken down into top form, and the direction of Sergiu Commissiona was rather tense and unsteady. However, Alfred Brendel offered exceptionally poised and subtle playing in the Mozart G major Piano Concerto, K. 453—playing remarkable for its conciliation of repose with inner motion, of layers of articulative detail with a sense of continuing line, not to mention an ever more venturesome yet still convincing elaboration of Mozart's fermatas. In two arias (*Ruhe sanft* from *Zaïde* and *Vorrei spiegarvi, o Dio*), Benita Valente offered fresh evidence of her growing maturity and self-confidence; her radiant voice is now projected with complete security, and her musical sensitivity, always admirable in a somewhat passive way, now comes across as a strong and positive shaping force. □

ART / Lawrence Alloway

The comics are now part of a reciprocal relationship between art and popular culture. On one hand, artists have used comics as their sources and, on the other hand, comics have come to be regarded as art. Before Andy Warhol and Roy Lichtenstein produced their paintings of quoted comics at the start of the 1960s, there had been other points of contact. In the 1940s paintings by Matta and Gorky used distorted images of *Pluto* (Walt Disney's, not the infernal one) and in the 1950s Fancis Bacon used in his paintings of Van Gogh images of a drunken man on a tree-lined road from Wilhelm Busch's *Der Undankbare*. Busch is better known for *Max und Moritz*, an example of which is on view in the exhibition of "75 Years of the Comics" at the New York Cultural Center (September 8-November 7).

The show has been selected by Maurice Horn who in 1967 was co-organizer of an exhibition of "Bande Dessinée et Figuration Narrative" at the Musée des Arts Décoratifs, Paris. It surveyed both the comics and the European artists, using the comics either as quoted imagery or as sequential display. The American end of the assimilation of comics into painting was collected in 1969 at the Institute of Contemporary Art, University of Pennsylvania, under the title of "The Spirit of the Comics." Finally, at the University of Maryland Art Gallery last spring there was an exhibition on "The Art of the Comic Strip."

The cumulative effect of all these shows has been to draw attention to comics as themselves an art and not merely as anonymous, low material subject to transformation by artists. Judith O'Sullivan, for instance, in the solid catalogue for the Maryland show, characterized convincingly the "sinuous line of Art Nouveau in the strips of Winsor McCay" (*Little Nemo* is his most famous work).

"75 Years of Comics" is arranged in five sections which coincide broadly with the development of the art. They are: the Heroic Period (*The Yellow Kid, The Katzenjammer Kids*), The Great Tradition (humor and family strips of the earlier 20th century), Man and Superman (detective and costume heroes, as they are called in the trade), and the Current Scene along with the Faraway and the Far-out (from the "sophisticated" strips of the 1950s to "underground" comics like *Zap*). There are more than 300 items, including original art work, tearsheets from newspaper strips, and pages from comic books.

The third section, in some ways my favorite, Man and Superman, is rich in connections to the movies and to pulp magazines with no concessions to grace. The origin of *Dick Tracy* (represented in the exhibition by a late drawing) is worth recounting as an example of the compounding of topical and archaic themes in adventure comics. Chester Gould created Tracy in 1931, prompted by the gang warfare of the 1920s; he explained that he wanted Dick Tracy's profile to be like that of a "young Sherlock Holmes," but he was to be "dressed like a modern G-Man." Thus Victorian Baker Street and modern Chicago, aloof amateurism and pushy professionalism, are combined with a kind of iconographical wit that runs through our popular culture.

Milton Caniff (*Terry and the Pirates, Steve Canyon*) wrote: "Use motion picture technique in the execution. First panel: long shot with the speaking character in the mid foreground. Second panel: middle shot with dialogue to move the plot along. Third panel: semi close-up to set reader for a significant last speech. Fourth panel: full close-up of speaking character with socko line." The depiction of action in these compressed terms, joined to a close-knit system of overlapping forms so that everything contributes to an illusion of real space, produced a crisp naturalism still viable in both adventure and women's strips, such as Ken Ernst's *Mary*

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TOMB EFFIGIES IN A VILLAGE CHURCH, SUSSEX

It is not known of whom they are likenesses:
The noble young man with a lion, the lady with a hound,
Stretching taut in their stone draperies, like prone columns
Fluting the aisles of a cold church, where the air is grassy.
The sea in a dark century ate the bones of them,
Seascraping the walls down to the old town;
Only some swift fisher there filched the lids
When the coffined flesh in its rags quickened,
Putting out with the tide. Not ribbed for such seagoing,
Those little skiffs wickered of the last rigidities
Puttered down offshore. What came to rest safe indoors,
Out of reach of seas' drubbing, was these marble forms,
Nameless and serene. The sedge comes up
Through the bouldered floor, up through the graves under;
In the corner the sedilia chair generations of vicars;
Man in his flesh and in his effigy measures the dust
Of endless mediaeval afternoons; and in a tiny window
Christ the Fisher stills the deep;
Around the margins of its glass: lace-edged, the sea,
The sea that puts all Sussex to sleep.

Nancy G. Westerfield

Worth and Stan Drake's *The Heart of Juliet Jones.*

Recent developments in comics, as opposed to the continuation of earlier forms, have been away from realism, such as Robert Crumb's *Fritz the Cat,* a hippie version of *Felix the Cat.* Crumb's format is a revival of pre-realistic comics, with their unaccented progression from box to box: this anti-Establishment primitivism suits Fritz's career perfectly. Comic *books,* as opposed to newspaper strips, reached a climax of elaboration in the second half of the 1960s, especially in such Marvel Comics as *Captain America* and *Nick Fury, Agent of Shield.* Their manneristic complexity, which seems to have just faded out, is sampled at the Cultural Center by Jack Kirby's *The Mighty Thor.*

The individuation of comics artists must include reference to Burne Hogarth who, when he took over a *Tarzan* strip in 1936, brought to it a sophisticated sense of Mannerism (Tarzan as a post-Michelangelesque male) and of Japanese art (in the flat patterning of jungle flora). There may be an analogy here with an artist like Graves Gladney who, in the same period, painted covers for Street and Smith's pulp magazines, including *The Shadow.* His training included study at the Slade School of Art, London, and beneath his lurid gestures lurks art school anatomy and Rembrandt flickers in his chiaroscuro. At present however there is no study of the pulp magazines which can be compared to the depth and precision of comics research and preservation (there are several notable collections now).

The purpose of comics research should not be solely the identification of individual hands, because the artists are working with shared, easily accessible subjects. For all the contributions made by individuals, they work within a body of set forms, like song writers, commercial movie makers and science fiction authors. Their work has to satisfy public taste immediately and if it fails to do so it is dropped. A part of their skill is in conforming to fashion. The modulation of their motifs and topics is often dictated as much by shifts of audience interest as by personal creativity. Frequently the artists work to match the demand.

The overall unit to which comics artists contribute is of course the genre, para-individual forms that span generations of readers. Walt Kelly is well known for his liberal strips, but the form he uses is that of Walt Disney's animal cartoons (he worked for Disney in the 1930s): hence we have Silly Symphonies in seminar form. This is partly Kelly's personal knack, but it is made possible by the strength of the ongoing genre of the speaking animal. The family strips in the present exhibition are as much a part of a continuous soap opera as they are of personal invention. One of the requirements of future comics research, now that the artists are known and characterized, is the interpretation of the comics as a part of culture, drawn by artists but also shaped by the socially formed expectations of the audience, ourselves. □

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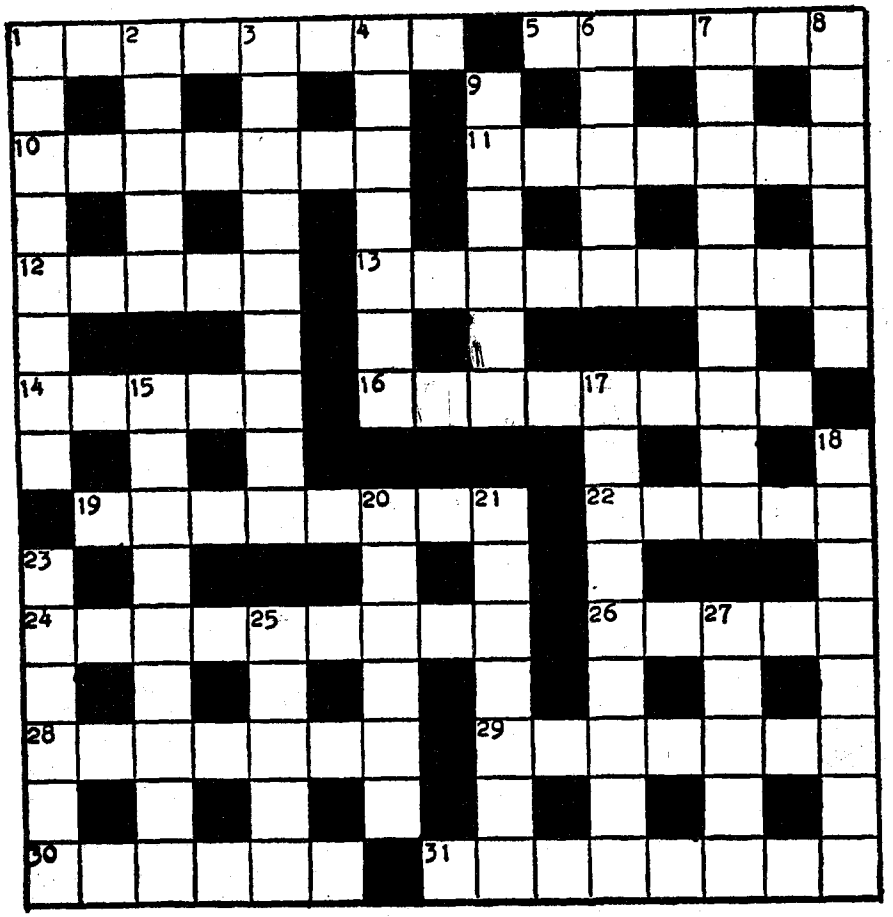
Crossword Puzzle No. 1405

FRANK W. LEWIS



ACROSS

1 Not exactly clear as mud, a clue could be with honors. (3,5)
5 More apt to be glib speech? (6)
10 Uses dots and dashes in glass, perhaps. (7)
11 Wild-looking after prolonged suffering as a writer. (7)
12 Order, like in a small instrument. (5)
13 Being in bad scabs, they might indicate infection. (9)
14 First-class type. (5)
16 Architect noted for designing wings. (8)
19 The first person attending the dance might commonly be a clod! (One was associated with old song.) (8)
22 This wood sounds great for vacations. (5)
24 Giving a little experience to spicing things up. (9)
26 The waste parts of fallouts, but not with stupid persons. (5)
28 No tumblers with locks, when such is used. (7)
29 Mineral oil, perhaps, to the climber. (7)
30 What Danny Kaye's grandpa ate to impress a pretty lady who went for men that were shady. (6)
31 Supporting framework for a ship, perhaps, but not keels. (8)

DOWN

1 Most cues might be matters of habit. (8)
2 Molten material made of gamma particles. (5)
3 Many a house has such degradation. (9)
4 One having the main part with father around is cowardly. (7)
6 Moot, perhaps. (5)
7 One purpose of alchemy was to do it, perhaps in the mate's turn. (9)
8 Pungent root that might be food to an Egyptian god. (6)
9 Such girls seem easily pursued! (6)
15 Change a tire on it, with resounding results. (9)
17 Worthy of the gods! (9)
18 The head clan of the Semitic type. (8)
20 French city, but it's name is now different. (6)
21 Is the volume of wood kept by the captain? (7)
23 Math's a strange subject for the medic to study! (6)
25 Painter, alternatively a writer. (5)
27 Did such a sea-faring man used to be frequently struck? (5)

SOLUTION TO PUZZLE NO. 1404

ACROSS: 1 Fork lifts; 6 Cased; 9 Light; 10 Relenting; 11 Exchequer; 12 Ounce; 13 Fudge; 15 Acetifies; 18 Resilient; 19 Grips; 20 Spurn; 22 Thuringia; 25 Archivist; 26 Awake; 27 Liege; 28 Redresses. DOWN: 1 False; 2 Regicides; 3 Lathe; 4 Formulate; 5 Solar; 6 Condoning; 7 Scion; 8 Digresses; 13 Forestall; 14 Eglantine; 16 Entrusted; 17 Isinglass; 21 Uncle; 22 Trier; 23 Image; 24 Abets.

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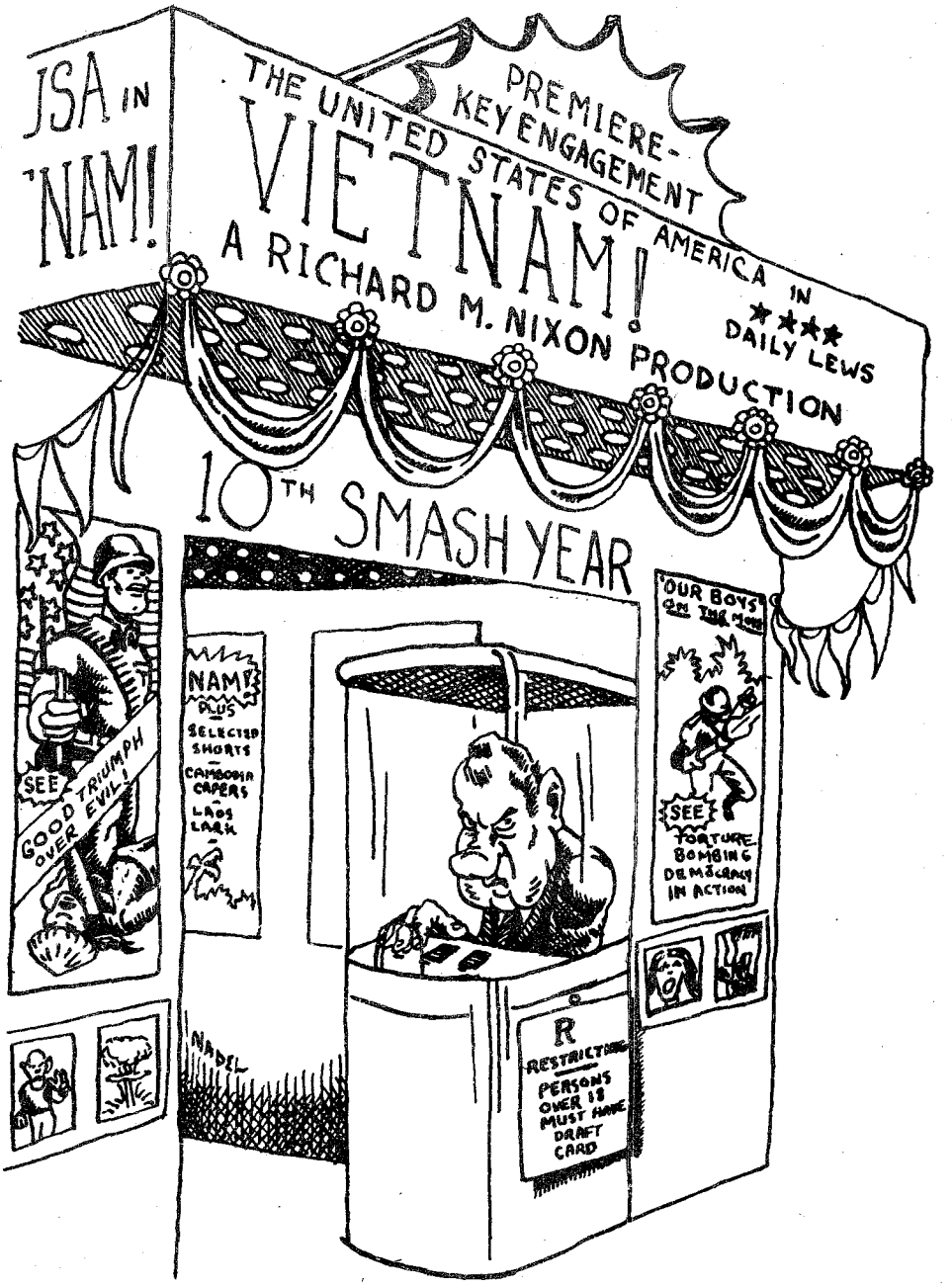

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